

HOUSE BILL No. 2640

By Representative Huff

1-18

9 AN ACT concerning sales taxation; relating to sales of new motor vehi-
10 cles; taxation of rebates; amending K.S.A. 2005 Supp. 79-3602 and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 79-3602 is hereby amended to read as
15 follows: 79-3602. Except as otherwise provided, as used in the Kansas
16 retailers' sales tax act:

17 (a) "Agent" means a person appointed by a seller to represent the
18 seller before the member states.

19 (b) "Agreement" means the multistate agreement entitled the
20 streamlined sales and use tax agreement approved by the streamlined
21 sales tax implementing states at Chicago, Illinois on November 12, 2002.

22 (c) "Alcoholic beverages" means beverages that are suitable for hu-
23 man consumption and contain .05% or more of alcohol by volume.

24 (d) "Certified automated system (CAS)" means software certified un-
25 der the agreement to calculate the tax imposed by each jurisdiction on a
26 transaction, determine the amount of tax to remit to the appropriate state
27 and maintain a record of the transaction.

28 (e) "Certified service provider (CSP)" means an agent certified under
29 the agreement to perform all the seller's sales and use tax functions, other
30 than the seller's obligation to remit tax on its own purchases.

31 (f) "Computer" means an electronic device that accepts information
32 in digital or similar form and manipulates it for a result based on a se-
33 quence of instructions.

34 (g) "Computer software" means a set of coded instructions designed
35 to cause a computer or automatic data processing equipment to perform
36 a task.

37 (h) "Delivered electronically" means delivered to the purchaser by
38 means other than tangible storage media.

39 (i) "Delivery charges" means charges by the seller of personal prop-
40 erty or services for preparation and delivery to a location designated by
41 the purchaser of personal property or services including, but not limited
42 to, transportation, shipping, postage, handling, crating and packing.

43 (j) "Direct mail" means printed material delivered or distributed by

1 United States mail or other delivery services to a mass audience or to
2 addressees on a mailing list provided by the purchaser or at the direction
3 of the purchaser when the cost of the items are not billed directly to the
4 recipients. Direct mail includes tangible personal property supplied di-
5 rectly or indirectly by the purchaser to the direct mail seller for inclusion
6 in the package containing the printed material. Direct mail does not in-
7 clude multiple items of printed material delivered to a single address.

8 (k) "Director" means the state director of taxation.

9 (l) "Educational institution" means any nonprofit school, college and
10 university that offers education at a level above the twelfth grade, and
11 conducts regular classes and courses of study required for accreditation
12 by, or membership in, the North Central Association of Colleges and
13 Schools, the state board of education, or that otherwise qualify as an
14 "educational institution," as defined by K.S.A. 74-50,103, and amend-
15 ments thereto. Such phrase shall include: (1) A group of educational in-
16 stitutions that operates exclusively for an educational purpose; (2) non-
17 profit endowment associations and foundations organized and operated
18 exclusively to receive, hold, invest and administer moneys and property
19 as a permanent fund for the support and sole benefit of an educational
20 institution; (3) nonprofit trusts, foundations and other entities organized
21 and operated principally to hold and own receipts from intercollegiate
22 sporting events and to disburse such receipts, as well as grants and gifts,
23 in the interest of collegiate and intercollegiate athletic programs for the
24 support and sole benefit of an educational institution; and (4) nonprofit
25 trusts, foundations and other entities organized and operated for the pri-
26 mary purpose of encouraging, fostering and conducting scholarly inves-
27 tigations and industrial and other types of research for the support and
28 sole benefit of an educational institution.

29 (m) "Electronic" means relating to technology having electrical, dig-
30 ital, magnetic, wireless, optical, electromagnetic or similar capabilities.

31 (n) "Food and food ingredients" means substances, whether in liquid,
32 concentrated, solid, frozen, dried or dehydrated form, that are sold for
33 ingestion or chewing by humans and are consumed for their taste or
34 nutritional value. "Food and food ingredients" does not include alcoholic
35 beverages or tobacco.

36 (o) "Gross receipts" means the total selling price or the amount re-
37 ceived as defined in this act, in money, credits, property or other consid-
38 eration valued in money from sales at retail within this state; and em-
39 braced within the provisions of this act. The taxpayer, may take credit in
40 the report of gross receipts for: (1) An amount equal to the selling price
41 of property returned by the purchaser when the full sale price thereof,
42 including the tax collected, is refunded in cash or by credit; and (2) an
43 amount equal to the allowance given for the trade-in of property.

1 (p) “Ingredient or component part” means tangible personal property
2 which is necessary or essential to, and which is actually used in and be-
3 comes an integral and material part of tangible personal property or serv-
4 ices produced, manufactured or compounded for sale by the producer,
5 manufacturer or compounder in its regular course of business. The fol-
6 lowing items of tangible personal property are hereby declared to be
7 ingredients or component parts, but the listing of such property shall not
8 be deemed to be exclusive nor shall such listing be construed to be a
9 restriction upon, or an indication of, the type or types of property to be
10 included within the definition of “ingredient or component part” as
11 herein set forth:

12 (1) Containers, labels and shipping cases used in the distribution of
13 property produced, manufactured or compounded for sale which are not
14 to be returned to the producer, manufacturer or compounder for reuse.

15 (2) Containers, labels, shipping cases, paper bags, drinking straws,
16 paper plates, paper cups, twine and wrapping paper used in the distri-
17 bution and sale of property taxable under the provisions of this act by
18 wholesalers and retailers and which is not to be returned to such whole-
19 saler or retailer for reuse.

20 (3) Seeds and seedlings for the production of plants and plant prod-
21 ucts produced for resale.

22 (4) Paper and ink used in the publication of newspapers.

23 (5) Fertilizer used in the production of plants and plant products
24 produced for resale.

25 (6) Feed for animals, fowl and aquatic plants and animals, the primary
26 purpose of which is use in agriculture or aquaculture, as defined in K.S.A.
27 47-1901, and amendments thereto, the production of food for human
28 consumption, the production of animal, dairy, poultry or aquatic plant
29 and animal products, fiber, fur, or the production of offspring for use for
30 any such purpose or purposes.

31 (q) “Isolated or occasional sale” means the nonrecurring sale of tan-
32 gible personal property, or services taxable hereunder by a person not
33 engaged at the time of such sale in the business of selling such property
34 or services. Any religious organization which makes a nonrecurring sale
35 of tangible personal property acquired for the purpose of resale shall be
36 deemed to be not engaged at the time of such sale in the business of
37 selling such property. Such term shall include: (1) Any sale by a bank,
38 savings and loan institution, credit union or any finance company licensed
39 under the provisions of the Kansas uniform consumer credit code of tan-
40 gible personal property which has been repossessed by any such entity;
41 and (2) any sale of tangible personal property made by an auctioneer or
42 agent on behalf of not more than two principals or households if such
43 sale is nonrecurring and any such principal or household is not engaged

1 at the time of such sale in the business of selling tangible personal
2 property.

3 (r) “Lease or rental” means any transfer of possession or control of
4 tangible personal property for a fixed or indeterminate term for consid-
5 eration. A lease or rental may include future options to purchase or
6 extend.

7 (1) Lease or rental does not include: (A) A transfer of possession or
8 control of property under a security agreement or deferred payment plan
9 that requires the transfer of title upon completion of the required
10 payments;

11 (B) a transfer or possession or control of property under an agree-
12 ment that requires the transfer of title upon completion of required pay-
13 ments and payment of an option price does not exceed the greater of
14 \$100 or 1% of the total required payments; or

15 (C) providing tangible personal property along with an operator for
16 a fixed or indeterminate period of time. A condition of this exclusion is
17 that the operator is necessary for the equipment to perform as designed.
18 For the purpose of this subsection, an operator must do more than main-
19 tain, inspect or set-up the tangible personal property.

20 (2) Lease or rental does include agreements covering motor vehicles
21 and trailers where the amount of consideration may be increased or de-
22 creased by reference to the amount realized upon sale or disposition of
23 the property as defined in 26 U.S.C. 7701(h)(1).

24 (3) This definition shall be used for sales and use tax purposes re-
25 gardless if a transaction is characterized as a lease or rental under gen-
26 erally accepted accounting principles, the internal revenue code, the uni-
27 form commercial code, K.S.A. 84-1-101 et seq. and amendments thereto,
28 or other provisions of federal, state or local law.

29 (4) This definition will be applied only prospectively from the effec-
30 tive date of this act and will have no retroactive impact on existing leases
31 or rentals.

32 (s) “Load and leave” means delivery to the purchaser by use of a
33 tangible storage media where the tangible storage media is not physically
34 transferred to the purchaser.

35 (t) “Member state” means a state that has entered in the agreement,
36 pursuant to provisions of article VIII of the agreement.

37 (u) “Model 1 seller” means a seller that has selected a CSP as its
38 agent to perform all the seller’s sales and use tax functions, other than
39 the seller’s obligation to remit tax on its own purchases.

40 (v) “Model 2 seller” means a seller that has selected a CAS to perform
41 part of its sales and use tax functions, but retains responsibility for re-
42 mitting the tax.

43 (w) “Model 3 seller” means a seller that has sales in at least five

1 member states, has total annual sales revenue of at least \$500,000,000,
2 has a proprietary system that calculates the amount of tax due each juris-
3 diction and has entered into a performance agreement with the member
4 states that establishes a tax performance standard for the seller. As used
5 in this subsection a seller includes an affiliated group of sellers using the
6 same proprietary system.

7 (x) “Municipal corporation” means any city incorporated under the
8 laws of Kansas.

9 (y) “Nonprofit blood bank” means any nonprofit place, organization,
10 institution or establishment that is operated wholly or in part for the
11 purpose of obtaining, storing, processing, preparing for transfusing, fur-
12 nishing, donating or distributing human blood or parts or fractions of
13 single blood units or products derived from single blood units, whether
14 or not any remuneration is paid therefor, or whether such procedures are
15 done for direct therapeutic use or for storage for future use of such
16 products.

17 (z) “Persons” means any individual, firm, copartnership, joint adven-
18 ture, association, corporation, estate or trust, receiver or trustee, or any
19 group or combination acting as a unit, and the plural as well as the singular
20 number; and shall specifically mean any city or other political subdivision
21 of the state of Kansas engaging in a business or providing a service spe-
22 cifically taxable under the provisions of this act.

23 (aa) “Political subdivision” means any municipality, agency or sub-
24 division of the state which is, or shall hereafter be, authorized to levy taxes
25 upon tangible property within the state or which certifies a levy to a
26 municipality, agency or subdivision of the state which is, or shall hereafter
27 be, authorized to levy taxes upon tangible property within the state. Such
28 term also shall include any public building commission, housing, airport,
29 port, metropolitan transit or similar authority established pursuant to law.

30 (bb) “Prescription” means an order, formula or recipe issued in any
31 form of oral, written, electronic or other means of transmission by a duly
32 licensed practitioner authorized by the laws of this state.

33 (cc) “Prewritten computer software” means computer software, in-
34 cluding prewritten upgrades, which is not designed and developed by the
35 author or other creator to the specifications of a specific purchaser. The
36 combining of two or more prewritten computer software programs or
37 prewritten portions thereof does not cause the combination to be other
38 than prewritten computer software. Prewritten computer software in-
39 cludes software designed and developed by the author or other creator
40 to the specifications of a specific purchaser when it is sold to a person
41 other than the purchaser. Where a person modifies or enhances computer
42 software of which the person is not the author or creator, the person shall
43 be deemed to be the author or creator only of such person’s modifications

1 or enhancements. Prewritten computer software or a prewritten portion
2 thereof that is modified or enhanced to any degree, where such modifi-
3 cation or enhancement is designed and developed to the specifications of
4 a specific purchaser, remains prewritten computer software, except that
5 where there is a reasonable, separately stated charge or an invoice or
6 other statement of the price given to the purchaser for such modification
7 or enhancement, such modification or enhancement shall not constitute
8 prewritten computer software.

9 (dd) "Property which is consumed" means tangible personal property
10 which is essential or necessary to and which is used in the actual process
11 of and consumed, depleted or dissipated within one year in (1) the pro-
12 duction, manufacture, processing, mining, drilling, refining or compound-
13 ing of tangible personal property, (2) the providing of services, (3) the
14 irrigation of crops, for sale in the regular course of business, or (4) the
15 storage or processing of grain by a public grain warehouse or other grain
16 storage facility, and which is not reusable for such purpose. The following
17 is a listing of tangible personal property, included by way of illustration
18 but not of limitation, which qualifies as property which is consumed:

19 (A) Insecticides, herbicides, germicides, pesticides, fungicides, fu-
20 mигants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals
21 for use in commercial or agricultural production, processing or storage of
22 fruit, vegetables, feeds, seeds, grains, animals or animal products whether
23 fed, injected, applied, combined with or otherwise used;

24 (B) electricity, gas and water; and

25 (C) petroleum products, lubricants, chemicals, solvents, reagents and
26 catalysts.

27 (ee) "Purchase price" applies to the measure subject to use tax and
28 has the same meaning as sales price.

29 (ff) "Purchaser" means a person to whom a sale of personal property
30 is made or to whom a service is furnished.

31 (gg) "Quasi-municipal corporation" means any county, township,
32 school district, drainage district or any other governmental subdivision in
33 the state of Kansas having authority to receive or hold moneys or funds.

34 (hh) "Registered under this agreement" means registration by a seller
35 with the member states under the central registration system provided in
36 article IV of the agreement.

37 (ii) "Retailer" means a seller regularly engaged in the business of
38 selling, leasing or renting tangible personal property at retail or furnishing
39 electrical energy, gas, water, services or entertainment, and selling only
40 to the user or consumer and not for resale.

41 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for
42 any purpose other than for resale, sublease or subrent.

43 (kk) "Sale" or "sales" means the exchange of tangible personal prop-

1 erty, as well as the sale thereof for money, and every transaction, condi-
2 tional or otherwise, for a consideration, constituting a sale, including the
3 sale or furnishing of electrical energy, gas, water, services or entertain-
4 ment taxable under the terms of this act and including, except as provided
5 in the following provision, the sale of the use of tangible personal property
6 by way of a lease, license to use or the rental thereof regardless of the
7 method by which the title, possession or right to use the tangible personal
8 property is transferred. The term “sale” or “sales” shall not mean the sale
9 of the use of any tangible personal property used as a dwelling by way of
10 a lease or rental thereof for a term of more than 28 consecutive days.

11 (11) (1) “Sales or selling price” applies to the measure subject to
12 sales tax and means the total amount of consideration, including cash,
13 credit, property and services, for which personal property or services are
14 sold, leased or rented, valued in money, whether received in money or
15 otherwise, without any deduction for the following:

16 (A) The seller’s cost of the property sold;

17 (B) the cost of materials used, labor or service cost, interest, losses,
18 all costs of transportation to the seller, all taxes imposed on the seller and
19 any other expense of the seller;

20 (C) charges by the seller for any services necessary to complete the
21 sale, other than delivery and installation charges;

22 (D) delivery charges;

23 (E) installation charges; and

24 (F) the value of exempt personal property given to the purchaser
25 where taxable and exempt personal property have been bundled together
26 and sold by the seller as a single product or piece of merchandise.

27 (2) “Sales or selling price” shall not include:

28 (A) Discounts, including cash, term or coupons that are not reim-
29 bursed by a third party that are allowed by a seller and taken by a pur-
30 chaser on a sale;

31 (B) interest, financing and carrying charges from credit extended on
32 the sale of personal property or services, if the amount is separately stated
33 on the invoice, bill of sale or similar document given to the purchaser;

34 (C) any taxes legally imposed directly on the consumer that are sep-
35 arately stated on the invoice, bill of sale or similar document given to the
36 purchaser; ~~and~~

37 (D) the amount equal to the allowance given for the trade-in of prop-
38 erty, if separately stated on the invoice, billing or similar document given
39 to the purchaser; *and*

40 (E) *cash rebates granted by a manufacturer to a purchaser or lessee*
41 *of a new motor vehicle if paid directly to the retailer as a result of the*
42 *original sale.*

43 (mm) “Seller” means a person making sales, leases or rentals of per-

1 sonal property or services.

2 (nn) “Service” means those services described in and taxed under the
3 provisions of K.S.A. 79-3603 and amendments thereto.

4 (oo) “Sourcing rules” means the rules set forth in K.S.A. 2005 Supp.
5 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments
6 thereto, which shall apply to identify and determine the state and local
7 taxing jurisdiction sales or use taxes to pay, or collect and remit on a
8 particular retail sale.

9 (pp) “Tangible personal property” means personal property that can
10 be seen, weighed, measured, felt or touched, or that is in any other man-
11 ner perceptible to the senses. Tangible personal property includes elec-
12 tricity, water, gas, steam and prewritten computer software.

13 (qq) “Taxpayer” means any person obligated to account to the direc-
14 tor for taxes collected under the terms of this act.

15 (rr) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco or
16 any other item that contains tobacco.

17 Sec. 2. K.S.A. 2005 Supp. 79-3602 is hereby repealed.

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