

## HOUSE BILL No. 2522

By Committee on Taxation

1-22

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9 AN ACT concerning sales taxation; relating to certain cash rebates on  
10 sales or leases of new motor vehicles; amending K.S.A. 2009 Supp. 79-  
11 3602 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 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. De-  
43 livery charges shall not include charges for delivery of direct mail if the

1 charges are separately stated on an invoice or similar billing document  
2 given to the purchaser.

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

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

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

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

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

39 (o) "Gross receipts" means the total selling price or the amount re-  
40 ceived as defined in this act, in money, credits, property or other consid-  
41 eration valued in money from sales at retail within this state; and em-  
42 braced within the provisions of this act. The taxpayer, may take credit in  
43 the report of gross receipts for: (1) An amount equal to the selling price

1 of property returned by the purchaser when the full sale price thereof,  
2 including the tax collected, is refunded in cash or by credit; and (2) an  
3 amount equal to the allowance given for the trade-in of property.

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

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

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

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

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

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

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

34 (q) "Isolated or occasional sale" means the nonrecurring sale of tan-  
35 gible personal property, or services taxable hereunder by a person not  
36 engaged at the time of such sale in the business of selling such property  
37 or services. Any religious organization which makes a nonrecurring sale  
38 of tangible personal property acquired for the purpose of resale shall be  
39 deemed to be not engaged at the time of such sale in the business of  
40 selling such property. Such term shall include: (1) Any sale by a bank,  
41 savings and loan institution, credit union or any finance company licensed  
42 under the provisions of the Kansas uniform consumer credit code of tan-  
43 gible personal property which has been repossessed by any such entity;

1 and (2) any sale of tangible personal property made by an auctioneer or  
2 agent on behalf of not more than two principals or households if such  
3 sale is nonrecurring and any such principal or household is not engaged  
4 at the time of such sale in the business of selling tangible personal  
5 property.

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

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

14 (B) a transfer or possession or control of property under an agree-  
15 ment that requires the transfer of title upon completion of required pay-  
16 ments and payment of an option price does not exceed the greater of  
17 \$100 or 1% of the total required payments; or

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

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

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

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

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

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

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

43 (v) “Model 2 seller” means a seller that has selected a CAS to perform

1 part of its sales and use tax functions, but retains responsibility for re-  
2 mitting the tax.

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

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

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

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

26 (aa) “Political subdivision” means any municipality, agency or sub-  
27 division of the state which is, or shall hereafter be, authorized to levy taxes  
28 upon tangible property within the state or which certifies a levy to a  
29 municipality, agency or subdivision of the state which is, or shall hereafter  
30 be, authorized to levy taxes upon tangible property within the state. Such  
31 term also shall include any public building commission, housing, airport,  
32 port, metropolitan transit or similar authority established pursuant to law  
33 and the horsethief reservoir benefit district established pursuant to K.S.A.  
34 82a-2201, and amendments thereto.

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

38 (cc) “Prewritten computer software” means computer software, in-  
39 cluding prewritten upgrades, which is not designed and developed by the  
40 author or other creator to the specifications of a specific purchaser. The  
41 combining of two or more prewritten computer software programs or  
42 prewritten portions thereof does not cause the combination to be other  
43 than prewritten computer software. Prewritten computer software in-

1 cludes software designed and developed by the author or other creator  
2 to the specifications of a specific purchaser when it is sold to a person  
3 other than the purchaser. Where a person modifies or enhances computer  
4 software of which the person is not the author or creator, the person shall  
5 be deemed to be the author or creator only of such person's modifications  
6 or enhancements. Prewritten computer software or a prewritten portion  
7 thereof that is modified or enhanced to any degree, where such modifi-  
8 cation or enhancement is designed and developed to the specifications of  
9 a specific purchaser, remains prewritten computer software, except that  
10 where there is a reasonable, separately stated charge or an invoice or  
11 other statement of the price given to the purchaser for such modification  
12 or enhancement, such modification or enhancement shall not constitute  
13 prewritten computer software.

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

24 (A) Insecticides, herbicides, germicides, pesticides, fungicides, fu-  
25 migants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals  
26 for use in commercial or agricultural production, processing or storage of  
27 fruit, vegetables, feeds, seeds, grains, animals or animal products whether  
28 fed, injected, applied, combined with or otherwise used;

29 (B) electricity, gas and water; and

30 (C) petroleum products, lubricants, chemicals, solvents, reagents and  
31 catalysts.

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

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

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

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

42 (ii) "Retailer" means a seller regularly engaged in the business of  
43 selling, leasing or renting tangible personal property at retail or furnishing

- 1 electrical energy, gas, water, services or entertainment, and selling only  
2 to the user or consumer and not for resale.
- 3 (jj) “Retail sale” or “sale at retail” means any sale, lease or rental for  
4 any purpose other than for resale, sublease or subrent.
- 5 (kk) “Sale” or “sales” means the exchange of tangible personal prop-  
6 erty, as well as the sale thereof for money, and every transaction, condi-  
7 tional or otherwise, for a consideration, constituting a sale, including the  
8 sale or furnishing of electrical energy, gas, water, services or entertain-  
9 ment taxable under the terms of this act and including, except as provided  
10 in the following provision, the sale of the use of tangible personal property  
11 by way of a lease, license to use or the rental thereof regardless of the  
12 method by which the title, possession or right to use the tangible personal  
13 property is transferred. The term “sale” or “sales” shall not mean the sale  
14 of the use of any tangible personal property used as a dwelling by way of  
15 a lease or rental thereof for a term of more than 28 consecutive days.
- 16 (ll) (1) “Sales or selling price” applies to the measure subject to sales  
17 tax and means the total amount of consideration, including cash, credit,  
18 property and services, for which personal property or services are sold,  
19 leased or rented, valued in money, whether received in money or oth-  
20 erwise, without any deduction for the following:
- 21 (A) The seller’s cost of the property sold;
- 22 (B) the cost of materials used, labor or service cost, interest, losses,  
23 all costs of transportation to the seller, all taxes imposed on the seller and  
24 any other expense of the seller;
- 25 (C) charges by the seller for any services necessary to complete the  
26 sale, other than delivery and installation charges;
- 27 (D) delivery charges; and
- 28 (E) installation charges.
- 29 (2) “Sales or selling price” includes consideration received by the  
30 seller from third parties if:
- 31 (A) The seller actually receives consideration from a party other than  
32 the purchaser and the consideration is directly related to a price reduction  
33 or discount on the sale;
- 34 (B) the seller has an obligation to pass the price reduction or discount  
35 through to the purchaser;
- 36 (C) the amount of the consideration attributable to the sale is fixed  
37 and determinable by the seller at the time of the sale of the item to the  
38 purchaser; and
- 39 (D) one of the following criteria is met:
- 40 (i) The purchaser presents a coupon, certificate or other documen-  
41 tation to the seller to claim a price reduction or discount where the cou-  
42 pon, certificate or documentation is authorized, distributed or granted by  
43 a third party with the understanding that the third party will reimburse

- 1 any seller to whom the coupon, certificate or documentation is presented;
- 2 (ii) the purchaser identifies to the seller that the purchaser is a mem-  
3 ber of a group or organization entitled to a price reduction or discount.  
4 A preferred customer card that is available to any patron does not con-  
5 stitute membership in such a group; or
- 6 (iii) the price reduction or discount is identified as a third party price  
7 reduction or discount on the invoice received by the purchaser or on a  
8 coupon, certificate or other documentation presented by the purchaser.
- 9 (3) “Sales or selling price” shall not include:
- 10 (A) Discounts, including cash, term or coupons that are not reim-  
11 bursed by a third party that are allowed by a seller and taken by a pur-  
12 chaser on a sale;
- 13 (B) interest, financing and carrying charges from credit extended on  
14 the sale of personal property or services, if the amount is separately stated  
15 on the invoice, bill of sale or similar document given to the purchaser;
- 16 (C) any taxes legally imposed directly on the consumer that are sep-  
17 arately stated on the invoice, bill of sale or similar document given to the  
18 purchaser;
- 19 (D) the amount equal to the allowance given for the trade-in of prop-  
20 erty, if separately stated on the invoice, billing or similar document given  
21 to the purchaser; and
- 22 (E) commencing on ~~July 1, 2006, and ending on June 30, 2009~~ *July*  
23 *1, 2010*, cash rebates granted by a manufacturer to a purchaser or lessee  
24 of a new motor vehicle if paid directly to the retailer as a result of the  
25 original sale.
- 26 (mm) “Seller” means a person making sales, leases or rentals of per-  
27 sonal property or services.
- 28 (nn) “Service” means those services described in and taxed under the  
29 provisions of K.S.A. 79-3603 and amendments thereto.
- 30 (oo) “Sourcing rules” means the rules set forth in K.S.A. 2009 Supp.  
31 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments  
32 thereto, which shall apply to identify and determine the state and local  
33 taxing jurisdiction sales or use taxes to pay, or collect and remit on a  
34 particular retail sale.
- 35 (pp) “Tangible personal property” means personal property that can  
36 be seen, weighed, measured, felt or touched, or that is in any other man-  
37 ner perceptible to the senses. Tangible personal property includes elec-  
38 tricity, water, gas, steam and prewritten computer software.
- 39 (qq) “Taxpayer” means any person obligated to account to the direc-  
40 tor for taxes collected under the terms of this act.
- 41 (rr) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco or  
42 any other item that contains tobacco.
- 43 (ss) “Entity-based exemption” means an exemption based on who



1 purchases the product or who sells the product. An exemption that is  
2 available to all individuals shall not be considered an entity-based  
3 exemption.

4 (tt) “Over-the-counter” drug means a drug that contains a label that  
5 identifies the product as a drug as required by 21 C.F.R. § 201.66. The  
6 over-the-counter drug label includes: (1) A drug facts panel; or (2) a  
7 statement of the active ingredients with a list of those ingredients con-  
8 tained in the compound, substance or preparation. Over-the-counter  
9 drugs do not include grooming and hygiene products such as soaps, clean-  
10 ing solutions, shampoo, toothpaste, antiperspirants and sun tan lotions  
11 and screens.

12 (uu) “Ancillary services” means services that are associated with or  
13 incidental to the provision of telecommunications services, including, but  
14 not limited to, detailed telecommunications billing, directory assistance,  
15 vertical service and voice mail services.

16 (vv) “Conference bridging service” means an ancillary service that  
17 links two or more participants of an audio or video conference call and  
18 may include the provision of a telephone number. Conference bridging  
19 service does not include the telecommunications services used to reach  
20 the conference bridge.

21 (ww) “Detailed telecommunications billing service” means an ancil-  
22 lary service of separately stating information pertaining to individual calls  
23 on a customer’s billing statement.

24 (xx) “Directory assistance” means an ancillary service of providing  
25 telephone number information or address information, or both.

26 (yy) “Vertical service” means an ancillary service that is offered in  
27 connection with one or more telecommunications services, which offers  
28 advanced calling features that allow customers to identify callers and to  
29 manage multiple calls and call connections, including conference bridging  
30 services.

31 (zz) “Voice mail service” means an ancillary service that enables the  
32 customer to store, send or receive recorded messages. Voice mail service  
33 does not include any vertical services that the customer may be required  
34 to have in order to utilize the voice mail service.

35 (aaa) “Telecommunications service” means the electronic transmis-  
36 sion, conveyance or routing of voice, data, audio, video or any other in-  
37 formation or signals to a point, or between or among points. The term  
38 telecommunications service includes such transmission, conveyance or  
39 routing in which computer processing applications are used to act on the  
40 form, code or protocol of the content for purposes of transmissions, con-  
41 veyance or routing without regard to whether such service is referred to  
42 as voice over Internet protocol services or is classified by the federal  
43 communications commission as enhanced or value added. Telecommu-

1    communications service does not include:

- 2       (1) Data processing and information services that allow data to be  
3       generated, acquired, stored, processed or retrieved and delivered by an  
4       electronic transmission to a purchaser where such purchaser's primary  
5       purpose for the underlying transaction is the processed data or  
6       information;
- 7       (2) installation or maintenance of wiring or equipment on a cus-  
8       tomer's premises;
- 9       (3) tangible personal property;
- 10      (4) advertising, including, but not limited to, directory advertising;
- 11      (5) billing and collection services provided to third parties;
- 12      (6) internet access service;
- 13      (7) radio and television audio and video programming services, re-  
14      gardless of the medium, including the furnishing of transmission, con-  
15      veyance and routing of such services by the programming service pro-  
16      vider. Radio and television audio and video programming services shall  
17      include, but not be limited to, cable service as defined in 47 U.S.C. 522(6)  
18      and audio and video programming services delivered by commercial mo-  
19      bile radio service providers, as defined in 47 C.F.R. 20.3;
- 20      (8) ancillary services; or
- 21      (9) digital products delivered electronically, including, but not limited  
22      to, software, music, video, reading materials or ring tones.
- 23      (bbb) "800 service" means a telecommunications service that allows  
24      a caller to dial a toll-free number without incurring a charge for the call.  
25      The service is typically marketed under the name 800, 855, 866, 877 and  
26      888 toll-free calling, and any subsequent numbers designated by the fed-  
27      eral communications commission.
- 28      (ccc) "900 service" means an inbound toll telecommunications serv-  
29      ice purchased by a subscriber that allows the subscriber's customers to  
30      call in to the subscriber's prerecorded announcement or live service. 900  
31      service does not include the charge for collection services provided by  
32      the seller of the telecommunications services to the subscriber, or service  
33      or product sold by the subscriber to the subscriber's customer. The serv-  
34      ice is typically marketed under the name 900 service, and any subsequent  
35      numbers designated by the federal communications commission.
- 36      (ddd) "Value-added non-voice data service" means a service that oth-  
37      erwise meets the definition of telecommunications services in which com-  
38      puter processing applications are used to act on the form, content, code  
39      or protocol of the information or data primarily for a purpose other than  
40      transmission, conveyance or routing.
- 41      (eee) "International" means a telecommunications service that orig-  
42      inates or terminates in the United States and terminates or originates  
43      outside the United States, respectively. United States includes the Dis-

1    trict of Columbia or a U.S. territory or possession.  
2    (ff) “Interstate” means a telecommunications service that originates  
3    in one United States state, or a United States territory or possession, and  
4    terminates in a different United States state or a United States territory  
5    or possession.  
6    (ggg) “Intrastate” means a telecommunications service that originates  
7    in one United States state or a United States territory or possession, and  
8    terminates in the same United States state or a United States territory or  
9    possession.  
10    Sec. 2. K.S.A. 2009 Supp. 79-3602 is hereby repealed.  
11    Sec. 3. This act shall take effect and be in force from and after its  
12    publication in the statute book.