

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on January 28, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Fuller

Committee staff present:

Tom Severn, Legislative Research  
Chris Courtright, Legislative Research  
Don Hayward, Reviser of Statutes  
Millie Foose, Committee Secretary

HB 2626

Representative Roe moved, second by Representative Lowther, that the amendment relating to auctioneer services be adopted. The committee agreed by consensus that the minutes should reflect legislative intent that selling of items not sold at an auction at a different auction would not constitute a basis for making a sale taxable. (Attachment 1) The motion carried.

Representative Vancrum moved, second by Representative Spaniol, that amendment #2 which granted an exemption for the transfer of a motor vehicle from a corporation to a shareholder be exempt be adopted. (Attachment 2) The motion carried.

The next item was Business Machinery. After committee discussion, the words "exclusively" and "solely" were deleted. Representative Rolfs moved, second by Representative Lowther, that the amendment be adopted. (Attachment 3) Representative Leach proposed a substitute motion to consider Farm Machinery exemption. Chairman Rolfs ruled the motion out of order. Representative Gatlin made a substitute motion, second by Representative Smith, to adopt the amendment as presented without section "E". The motion was withdrawn.

Representative Vancrum proposed a substitute motion, second by Representative Leach, to postpone action until a Fiscal Note was received. He withdrew the motion and agreed to wait for a report from Secretary Harley Duncan. It was then stated by the Chairman that action on the amendment would be postponed the next committee meeting.

The next subject under consideration was Computer Software. Don Hayward explained the packet and said that it was the intent to tax computer software that is offered for resale. There was considerable discussion concerning this and questions for Secretary Duncan. The committee made several changes on the proposed wording of the amendment by consensus. Representative Vancrum referred the committee to a suggested revision of K.S.A. 79-3603 (s). which was written by John C. Eisele, Overland Park. (Attachment 4) Representative Vancrum moved, second by Representative Pottorff, that the language proposed by Mr. Eisele be adopted. The motion was withdrawn. Representative Vancrum moved, second by Representative Snowbarger, that the proposed amendment presented by the department be adopted with the wording changes already agreed to by the committee. (Attachment 5, Part 8) Motion carried.

Telephone access charges were then discussed. Representative Gatlin moved, second by Representative Wagnon, that taxes be imposed on telephone access charges. (Attachment 5, Part 10) Motion failed. Representative Lowther moved, second by Representative Vancrum, that telephone access charges be exempt from the sales tax. Motion carried.

Janitorial services was then discussed. Representative Wunsch moved, second by Representative Roe, that cleaning services be subject to the sales tax. (Attachment 5, Part 13) Motion failed.

The minutes of the meeting of January 27, 1988 were approved.

There being no further business, the meeting was adjourned.

  
E. C. Rolfs, Chairman

Proposed amendment to HB 2626

On page 2, in line 81, before "if" by inserting "or household"; also, in line 81, by striking all after "nonrecurring"; in line 82, by striking all before "and"; also, in line 82, before "is" by inserting "or household"

## Proposed amendment to HB 2626

On page 7, in line 250, after "including" by inserting ":(1)"; in line 252, by striking "or" and inserting ":(2)"; in line 254, before the period by inserting ":(3) the transfer of motor vehicles or trailers by a corporation to a person as a result of the liquidation or dissolution of the corporation"

define primarily

#3

9

HB 2663

10

0342 ascribed thereto by K.S.A. 75-1226 and amendments thereto;

0343 (ii) all sales of tangible personal property purchased in ac-

0344 cordance with vouchers issued pursuant to the federal special

0345 supplemental food program for women, infants and children;

0346 (jj) all sales of medical supplies and equipment purchased

0347 directly by a nonprofit skilled nursing home or nonprofit inter-

0348 mediate nursing care home, as defined by K.S.A. 39-923, and

0349 amendments thereto, for the purpose of providing medical ser-

0350 vices to residents thereof. This exemption shall not apply to

0351 tangible personal property customarily used for human habita-

0352 tion purposes;

0353 (kk) all sales of tangible personal property purchased directly

0354 by a nonprofit organization for nonsectarian comprehensive

0355 multidiscipline youth development programs and activities pro-

0356 vided or sponsored by such organization. This exemption shall

0357 not apply to tangible personal property customarily used for

0358 human habitation purposes; and

0359 (ll) all sales of tangible personal property or services, in-

0360 cluding the renting and leasing of tangible personal property,

0361 purchased directly on behalf of a community-based mental re-

0362 tardation facility or mental health center organized pursuant to

0363 K.S.A. 19-4001 *et seq.*, and amendments thereto, and licensed in

0364 accordance with the provisions of K.S.A. 75-3307b and amend-

0365 ments thereto. This exemption shall not apply to tangible per-

0366 sonal property customarily used for human habitation purposes;

0367 and

0368 (mm) on and after January 1, 1989, all sales of machinery

0369 and equipment used directly and ~~exclusively~~ for the purposes of

0370 manufacturing, assembling, processing, finishing, storing,

0371 warehousing or distributing articles of tangible personal prop-

0372 erty in this state intended for resale by a manufacturing or

0373 processing plant or facility or a storage, warehousing or dis-

0374 tribution facility.

0375 (1) For purposes of this subsection, machinery and equip-

0376 ment shall be deemed to be used directly and ~~exclusively~~ in the

0377 manufacture, assemblage, processing, finishing, storing, ware-

0378 housing or distributing of tangible personal property where

primarily

primarily

#1.6MM / Rolfs / Lowther

~~Cattin / Smith~~

Van Crum / heads / a/d.

0379 such machinery and equipment is used ~~solely~~ during a man-  
0380 ufacturing, assembling, processing or finishing, storing ware-  
0381 housing or distributing operation;

0382 (A) To effect a direct and immediate physical change upon the  
0383 tangible personal property;

0384 (B) to guide or measure a direct and immediate physical  
0385 change upon such property where such function is an integral  
0386 and essential part of tuning, verifying or aligning the compo-  
0387 nent parts of such property;

0388 (C) to test or measure such property where such function is  
0389 an integral part of the production flow or function;

0390 (D) to transport, convey or handle such property during the  
0391 manufacturing, processing, storing, warehousing or distribu-  
0392 tion operation; or

0393 (E) to place such property in the container, package or  
0394 wrapping in which such property is normally sold or trans-  
0395 ported.

at the plant or  
facility

0396 (2) For purposes of this subsection "machinery and equip-  
0397 ment used directly and exclusively" shall include, but not be  
0398 limited to:

primarily

0399 (A) Mechanical machines or major components thereof con-  
0400 tributing to a manufacturing, assembling or finishing process;

0401 (B) molds and dies that determine the physical characteris-  
0402 tics of the finished product or its packaging material;

0403 (C) testing equipment to determine the quality of the fin-  
0404 ished product; and

0405 (D) computers and related peripheral equipment that di-  
0406 rectly control or measure the manufacturing process

or which are utilized  
for engineering of the  
finished product; and

primarily

0407 (3) "Machinery and equipment used directly and exclu-  
0408 sively" shall not include:

(E) computers and re-  
lated peripheral equipme  
utilized for research an  
development and product  
design.

0409 (A) Hand tools;

0410 (B) machinery, equipment and tools used in maintaining and  
0411 repairing any type of machinery and equipment;

0412 (C) transportation equipment not used solely in the man-  
0413 ufacturing, assembling, processing, furnishing, storing, ware-  
0414 housing or distributing process at the plant or facility;

0415 (D) office machines and equipment including computers

primarily ~~0416 and related peripheral equipment not directly and exclusively  
0417 used in controlling or measuring the manufacturing process;  
0418 (E) furniture and buildings; and  
0419 (F) machinery and equipment used in administrative, ac-  
0420 counting, sales or other such activities of the business.~~  
0421 Sec. 2. K.S.A. 1987 Supp. 79-3606 and 79-3642 are hereby  
0422 repealed.  
0423 Sec. 3. This act shall take effect and be in force from and  
0424 after its publication in the statute book.

**79-3642.** Refund of sales tax paid upon sale of certain machinery and equipment; limitations; procedure for claims. (a) The retailers' sales tax paid pursuant to the Kansas retailers' sales tax act on the sale of machinery and equipment purchased and used directly for the purposes of (1) manufacturing, fabricating, assembling, processing or finishing articles of commerce in this state by a manufacturing or processing plant or facility and (2) establishing or expanding such plant or facility physically or for the purpose of increasing the production capacity thereof shall be refunded as provided in this section.

(b) No refund shall be allowed under this section unless \$50,000 or more has been expended for the purchase of such machinery and equipment in any one calendar year and, due to such purchase, at least two new full-time production employee positions are established for each \$50,000 of expenditure claimed as a basis for refund. No credit for any new full-time production employee position shall be given unless such position is established and maintained after the date of purchase of the machinery and equipment and is in addition to the number of full-time production positions existing on such date. Employees hired seasonally shall not be deemed to be full-time production employees. No such refund shall be allowed for which a refund claim has been submitted pursuant to K.S.A. 79-3641, and amendments thereto.

(c) Each claim for refund of sales tax paid shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. No such claim for refund shall be submitted until one year subsequent to the hiring of two or more new full-time production employees required pursuant to subsection (b). The director shall review each claim and shall refund within 90 days after receipt of such claim that amount of sales tax paid as determined under the provisions of this section. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director.

(d) The provisions of this section shall expire on July 1, 1988:

January 1, 1989

**12-190.** Same; exempt sales; certification required of purchaser. All sales of farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment and all sales of ~~machinery and equipment for use in manufacturing plants located in the state of Kansas and used in the process of manufacturing personal property the sale of which will be subject to taxation under the Kansas retailers' sales tax act,~~ manufacturing as defined in K.S.A. 79-3606(mm), shall be exempt from taxes in any county in which the same were exempt on June 30, 1978, and taxes hereafter initiated by counties and class B cities under the provisions of this act. Each purchaser of farm machinery and each purchaser of manufacturing machinery and equipment exempted herein from the imposition of local sales taxes must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that he or she is engaged in farming or ranching or manufacturing and that the farm machinery or manufacturing machinery and equipment will be used only in farming or ranching or manufacturing as the case may be.



LAW OFFICE  
JOHN C. EISELE, CHARTERED  
SUITE 100, CLOVERLEAF 3 BUILDING  
6405 METCALF  
OVERLAND PARK, KANSAS 66202

#4

January 27, 1988

Ed C. Rolfs, Chairperson  
Standing Committee on Taxation  
House of Representatives, State of Kansas  
and Members of the Taxation Committee

Dear Mr. Rolfs and Members of the Committee:

I was present at the committee's meeting on Monday, January 25, 1988, and have been furnished a copy of Mr. Duncan's memorandum to you relative to his recommendations on sales tax issues including the recommendation pertaining to KAR 92-19-70-Computer Software and the proposed statutory change.

Mr. Duncan has assured the committee that you may define "intangible personal property" as "tangible personal property". Calling a dog a cat invites litigation. The "tangible personal property" language in Article 37 was the basis of the Board of Tax Appeals decision in the AT&T Technology Use Tax case. The Supreme Court has repeatedly said that the "first rule of construction when dealing with tax statutes is that they will not be extended by implication beyond the clear import of the language employed therein, and their operation will not be enlarged so as to include matters not specifically embraced". Mr. Duncan in his January 25 memorandum states ". . . therefore, we would propose that K.S.A. 79-3603(s) and any other necessary statutes be rewritten to impose clearly the retail sales tax and the compensating use tax on all sales to computer software if the software is designed for, marketed to and/or sold to more than one user. . . .". While I concur that the amendment to 79-3603(s) is necessary, as one looks at the compensating tax article K.S.A. 79-3602 needs to be amended to include the definitions which are referenced in Article 37. K.S.A. 79-3702(b) states: "79-3702. Definitions. For the purposes of this act. . .(b) the meaning ascribed to words and phrases in K.S.A. 79-3602, in so far as is practicable, shall be applicable herein unless otherwise provided. . . .". There is no definitive language in K.S.A. 79-3602 relative to computer software, nor is any amendment presently proposed of which I am aware at the time of the dictation of this memorandum.

Mr. Rolfs and Members of the Committee  
January 27, 1988

Page Two

I have discussed with a member of Mr. Duncan's staff both on Monday morning, 1/25/88, prior to the committee meeting, and subsequently thereto, some changes that I think are pertinent to the modification of 3603(s). I have also discussed some of my other concerns relative to the modification of (s) without modification to K.S.A. 79-3602 and other changes. Attached is an exhibit which, in lines 1 through 22, restate the proposed amendment as submitted by Mr. Duncan to the committee on 1/25/88. Lines 23 through 53 modify Mr. Duncan's submission to some extent and, for ease in comparison, I have highlighted the changes. Mr. Duncan made reference last Monday to the language in his submission as being derivative of the California Code. I am likewise attaching a copy of the California Code. Basically, my suggestions arise out of a couple of concerns. First, Application Software is not consumed, nor is it a consumable, and therefore the term "end user" has been substituted for "consumer". The term "end user" in the computer software industry, as in others, reflects more truly the status. Secondly, the California Code and the Idaho code (Mr. Duncan's submission being more derivative of the latter) contemplate the imposition of sales and use taxes upon the sale or licensing of canned or prewritten application programs. The sentence beginning at line 6 and ending on line 9 leaves open the question and ultimately to an administrative agency for determination, the extent of the sales or use tax involved in a joint development agreement between a programmer and a client when, from day one, it is contemplated that when completed the Application Software package would be licensed to other users. The license fees obviously are substantially less than the research and development costs incidental to the creation of an Application Software program. Hence the addition, in lines 45 through 53. That addition is substantially taken from Section 6010.9 of the California Code.

The constraints on the time of Mr. Duncan and his staff have not allowed the communication I would have preferred at the time of this writing. Most, if not all, of my objections relative to subparagraph (s) may have been resolved by the time of your meeting on January 28, 1988.

To not make the necessary changes to include the taxation of this intangible personal property interest as intangible personal property with the appropriate definitions in K.S.A. 79-3602 seems to me to merely invite the opportunity to have

Mr. Rolfs and Members of the Committee  
January 27, 1988

Page Three

to come back and do it over, when it can be readily done and with a relatively small amount of time and effort (and no litigation) at this juncture.

On behalf of PDA, Inc., my client, and myself, I wish to express my appreciation for the courtesy extended by yourself and your committee, and by Mr. Duncan and his staff.

Respectfully submitted,

A handwritten signature in cursive script, reading "John C. Eisele". The signature is written in dark ink and is positioned to the left of the typed name.

John C. Eisele

JCE/110

enclosures

[§ 24-045k]

Sec. 6010.9. [Custom computer programs.] "Sale" and "purchase," for the purposes of this part, do not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession, of a custom computer program, other than a basic operational program (as defined in Section 995.2), either in the form of written procedures or in the form of storage media on which, or in which, the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program so transferred.

As used in this section:

(a) "Storage media" includes punched cards, tapes, discs, diskettes, or drums on which computer programs may be embodied or stored.

(b) "Computer" does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment.

(c) "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

(d) "Custom computer program" means a computer program prepared to the special order of the customer and includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer. The term does not include a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the prewritten or "canned" program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification.

(Sec. 6010.9 is as added by Ch. 1274, Laws 1982, effective September 21, 1982.)



As submitted by Mr. Duncan on Monday, January 25, 1988:

1. (s) a tax at the rate of 4% upon the gross receipts
2. received from the sale of computer software. As used in
3. this subsection, "computer software" means information
4. and directions loaded into a computer which dictate
5. different functions to be performed by the computer.
6. Computer software includes any canned or prewritten
7. program which is held or existing for general or
8. repeated sale, even if the program was developed for a
9. single sale. For purposes of this subsection, computer
10. software does not include any custom computer program
11. which is written or prepared exclusively for a single
12. consumer and includes those services represented by
13. separately stated charges for the modification of
14. existing prewritten programs when the modifications are
15. written or prepared exclusively for a single consumer.
16. Modification to an existing prewritten program to meet a
17. single consumer's needs is custom computer programming
18. only to the extent of the modification, and only to the
19. extent that the actual amount charged for the
20. modification is separately stated on invoices,
21. statements and other billing documents provided to the
22. consumer.

Suggested revision:

23. (s) a tax at the rate of 4% upon the gross receipts
24. received from the sale of computer software. As used
25. in this subsection, "computer software" means
26. information and directions loaded into a computer which
27. dictate different functions to be performed by the
28. computer. Computer software includes any canned or
29. prewritten program which is held or existing for general
30. or repeated sale, even if the program was originally
31. developed for a single end user as custom computer
32. software. For purposes of this subsection, computer
33. software does not include any custom computer program
34. which is written or prepared exclusively for an initial
35. end user and includes those services represented by
36. separately stated charges for the modification of
37. existing prewritten programs when the modifications are
38. written or prepared exclusively for a single end user.
39. Modification to an existing prewritten program to meet a
40. single end user's needs is custom computer programming
41. only to the extent of the modification, and only to the
42. extent that the actual amount charged for the
43. modification is separately stated on invoices,
44. statements and other billing documents provided to the
45. end user. "Sale" for the purposes of this subsection,
46. does not include the design, development, writing,
47. translation, fabrication, lease, license to use or
48. transfer for a consideration of title or possession of a
49. custom computer program, either in the form of written
50. procedures or in the form of storage media on which, or
51. in which, the program is recorded, or any required
52. documentation or manuals designed to facilitate the use
53. of the custom computer program so transferred.



#5

Session of 1988

# HOUSE BILL No. 2626

By Special Committee on Assessment and Taxation

Re Proposal No. 6

12-16

0018 AN ACT amending the Kansas retailers' sales tax act; concerning  
0019 the definition, taxation and exemption of certain sales of  
0020 property and services thereunder; amending K.S.A. 79-3609  
0021 and K.S.A. 1987 Supp. 79-3602 and 79-3603 and repealing the  
0022 existing sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 1987 Supp. 79-3602 is hereby amended to  
0025 read as follows: 79-3602. (a) "Persons" means any individual,  
0026 firm, copartnership, joint adventure, association, corporation,  
0027 estate or trust, receiver or trustee, or any group or combination  
0028 acting as a unit, and the plural as well as the singular number;  
0029 and shall specifically mean any city or other political subdivision  
0030 of the state of Kansas engaging in a business or providing a  
0031 service specifically taxable under the provisions of this act.

0032 (b) "Director" means the state director of taxation.

0033 (c) "Sale" or "sales" means the exchange of tangible personal  
0034 property, as well as the sale thereof for money, and every  
0035 transaction, conditional or otherwise, for a consideration, consti-  
0036 tuting a sale, including the sale or furnishing of electrical energy,  
0037 gas, water, services or entertainment taxable under the terms of  
0038 this act and including, except as provided in the following  
0039 provision, the sale of the use of tangible personal property by  
0040 way of a lease, ~~license to use~~ or the rental thereof. The term  
0041 "sale" or "sales" shall not mean the sale of the use of any  
0042 tangible personal property used as a dwelling by way of a lease  
0043 or rental thereof for a term of more than 28 consecutive days.  
0044 (d) "Retailer" means a person regularly engaged in the busi-  
0045 ness of selling tangible personal property at retail or furnishing

8

regardless of the method by which the title, possession or right to use the tangible personal property is transferred

0046 electrical energy, gas, water, services or entertainment, and  
0047 selling only to the user or consumer and not for resale.

0048 (e) "Retail sale" or "sale at retail" means all sales made  
0049 within the state of tangible personal property or electrical en-  
0050 ergy, gas, water, services or entertainment for use or consump-  
0051 tion and not for resale.

8  
0052 (f) "Tangible personal property" means corporeal personal  
and computer software—0053 property.

0054 (g) "Selling price" means the total cost to the consumer  
0055 exclusive of discounts allowed and credited, but including  
0056 freight and transportation charges from retailer to consumer.

0057 (h) "Gross receipts" means the total selling price or the  
0058 amount received as defined in this act, in money, credits, prop-  
0059 erty or other consideration valued in money from sales at retail  
0060 within this state; and embraced within the provisions of this act.

0061 The taxpayer, may take credit in the report of gross receipts for:  
0062 (1) An amount equal to the selling price of property returned by  
0063 the purchaser when the full sale price thereof, including the tax  
0064 collected, is refunded in cash or by credit; (2) an amount equal to  
0065 the allowance given for the trade-in of property.

0066 (i) "Taxpayer" means any person obligated to account to the  
0067 director for taxes collected under the terms of this act.

0068 (j) "Isolated or occasional sale" means the nonrecurring sale  
0069 of tangible personal property, or services taxable hereunder by a  
0070 person not engaged at the time of such sale in the business of  
0071 selling such property or services. Any religious organization  
0072 which makes a nonrecurring sale of tangible personal property  
0073 acquired for the purpose of resale shall be deemed to be not  
0074 engaged at the time of such sale in the business of selling such  
0075 property. Such term shall include: (1) Any sale by a bank, savings  
0076 and loan institution, credit union or any finance company li-  
0077 censed under the provisions of the Kansas uniform consumer  
0078 credit code of tangible personal property which has been repos-  
0079 sessed by any such entity; and (2) any sale of tangible personal  
0080 property made by an auctioneer or agent on behalf of a single  
0081 principal if such sale is nonrecurring, is made at the principal's  
0082 place of residence and the principal is not engaged at the time of

0083 *such sale in the business of selling tangible personal property.*

0084 (k) "Service" means those services described in and taxed  
0085 under the provisions of K.S.A. 79-3603 and amendments thereto.

0086 (l) "Ingredient or component part" means tangible personal  
0087 property which is necessary or essential to, and which is actually  
0088 used in and becomes an integral and material part of tangible  
0089 personal property or services produced, manufactured or com-  
0090 pounded for sale by the producer, manufacturer or compounder  
0091 in its regular course of business. The following items of tangible  
0092 personal property are hereby declared to be ingredients or com-  
0093 ponent parts, but the listing of such property shall not be deemed  
0094 to be exclusive nor shall such listing be construed to be a  
0095 restriction upon, or an indication of, the type or types of property  
0096 to be included within the definition of "ingredient or component  
0097 part" as herein set forth:

0098 (1) Containers, labels and shipping cases used in the dis-  
0099 tribution of property produced, manufactured or compounded  
0100 for sale which are not to be returned to the producer, manufac-  
0101 turer or compounder for reuse.

0102 (2) Containers, labels, shipping cases, paper bags, drinking  
0103 straws, paper plates, paper cups, twine and wrapping paper used  
0104 in the distribution and sale of property taxable under the provi-  
0105 sions of this act by wholesalers and retailers and which is not to  
0106 be returned to such wholesaler or retailer for reuse.

0107 (3) Seeds and seedlings for the production of plants and plant  
0108 products produced for resale.

0109 (4) Paper and ink used in the publication of newspapers.

0110 (5) Fertilizer used in the production of plants and plant  
0111 products produced for resale.

0112 (6) Feed for animals, fowl and fish, the primary purpose of  
0113 which is use in agriculture, the production of food for human  
0114 consumption, the production of animal, dairy, poultry or fish  
0115 products, fiber, fur, or the production of offspring for use for any  
0116 such purpose or purposes.

0117 (m) "Property which is consumed" means tangible personal  
0118 property which is essential or necessary to and which is used in  
0119 the actual process of and immediately consumed or dissipated in



0120 (1) the production, manufacture, processing, mining, drilling,  
0121 refining or compounding of tangible personal property, (2) the  
0122 providing of services or (3) the irrigation of crops, for sale in the  
0123 regular course of business, and which is not reusable for such  
0124 purpose. The following items of tangible personal property are  
0125 hereby declared to be "consumed" but the listing of such prop-  
0126 erty shall not be deemed to be exclusive nor shall such listing be  
0127 construed to be a restriction upon or an indication of, the type or  
0128 types of property to be included within the definition of "prop-  
0129 erty which is consumed" as herein set forth:

0130 ~~(1)~~ (A) Insecticides, herbicides, germicides, pesticides, fun-  
0131 gicides, antibiotics, biologicals, pharmaceuticals, vitamins and  
0132 chemicals for use in commercial or agricultural production of  
0133 fruit, vegetables, feeds, seeds, animals or animal products  
0134 whether fed, injected, applied or otherwise used; and

0135 ~~(2)~~ (B) electricity, gas and water.

0136 (n) "Political subdivision" means any municipality, agency  
0137 or subdivision of the state which is, or shall hereafter be, autho-  
0138 rized to levy taxes upon tangible property within the state or  
0139 which certifies a levy to a municipality, agency or subdivision of  
0140 the state which is, or shall hereafter be, authorized to levy taxes  
0141 upon tangible property within the state. Such term also shall  
0142 include any public building commission, housing, airport, port,  
0143 metropolitan transit or similar authority established pursuant to  
0144 law.

0145 (o) "Municipal corporation" means any city incorporated  
0146 under the laws of Kansas.

0147 (p) "Quasi-municipal corporation" means any county, town-  
0148 ship, school district, drainage district or any other governmental  
0149 subdivision in the state of Kansas having authority to receive or  
0150 hold moneys or funds.

0151 (q) "Nonprofit blood bank" means any nonprofit place, orga-  
0152 nization, institution or establishment that is operated wholly or  
0153 in part for the purpose of obtaining, storing, processing, prepar-  
0154 ing for transfusing, furnishing, donating or distributing human  
0155 blood or parts or fractions of single blood units or products  
0156 derived from single blood units, whether or not any remunera-

0157 tion is paid therefor, or whether such procedures are done for  
0158 direct therapeutic use or for storage for future use of such  
0159 products.

0160 Sec. 2. K.S.A. 1987 Supp. 79-3603 is hereby amended to read  
0161 as follows: 79-3603. For the privilege of engaging in the business  
0162 of selling tangible personal property at retail in this state or  
0163 rendering or furnishing any of the services taxable under this act,  
0164 there is hereby levied and there shall be collected and paid a tax  
0165 as follows:

0166 (a) A tax at the rate of 4% upon the gross receipts received  
0167 from the sale of tangible personal property at retail within this  
0168 state. If any contractor has entered into a written binding con-  
0169 tract prior to May 15, 1986, for the construction, reconstruction,  
0170 repair, equipment or improvement of any building, airport,  
0171 highway, street, road, alley, sewer, sewage system, water line,  
0172 water system or any other improvement, and such contract and  
0173 the contract price includes the furnishing by the contractor of  
0174 tangible personal property subject to the tax imposed by this act  
0175 and which is to become part of the completed improvement,  
0176 such tax shall be imposed at the rate prescribed by law immedi-  
0177 ately prior to the effective date of this act, but this provision shall  
0178 not apply unless the contractor shall give notice and proof of  
0179 such contract to the director of taxation on or before July 10,  
0180 1986, which notice and proof shall be in such form and of such  
0181 sufficiency as the director of taxation shall prescribe;

0182 (b) a tax at the rate of 4% upon the gross receipts from  
0183 intrastate telephone or telegraph services, which sale is not  
0184 otherwise exempt from taxation under the provisions of this act;

0185 (c) a tax at the rate of 4% upon the gross receipts from the sale  
0186 or furnishing of gas, water, electricity and heat, which sale is not  
0187 otherwise exempt from taxation under the provisions of this act,  
0188 and whether furnished by municipally or privately owned utili-  
0189 ties;

0190 (d) a tax at the rate of 4% upon the gross receipts from the sale  
0191 of meals or drinks furnished at any private club, drinking es-  
0192 tablishment, catered event, restaurant, eating house, dining car,  
0193 hotel, drugstore or other place where meals or drinks are regu-

10  
For purposes of this subsection, intrastate telephone service shall be deemed to include any monthly flat rate end user line access charges

- 0194 larly sold to the public;
- 0195 (e) a tax at the rate of 4% upon the gross receipts from the sale  
0196 of admissions to any place providing amusement, entertainment  
0197 or recreation services including admissions to state, county,  
0198 district and local fairs, but such tax shall not be levied and  
0199 collected upon the gross receipts received from fees and charges  
0200 by political subdivisions of the state of Kansas for participation in  
0201 sports, games and other recreational activities;
- 0202 (f) a tax at the rate of 4% upon the gross receipts from the  
0203 operation of any coin-operated device dispensing or providing  
0204 tangible personal property, amusement or other services except  
0205 laundry services, whether automatic or manually operated;
- 0206 (g) a tax at the rate of 4% upon the gross receipts from the  
0207 service of renting of rooms by hotels, as defined by K.S.A. 36-501  
0208 and amendments thereto, except such tax shall not apply where a  
0209 room is rented by an individual, firm, association or corporation  
0210 for a period of more than 28 consecutive days;
- 0211 (h) a tax at the rate of 4% upon the gross receipts from the  
0212 service of renting or leasing of tangible personal property except  
0213 such tax shall not apply to the renting or leasing of machinery,  
0214 equipment or other personal property owned by a city and  
0215 purchased from the proceeds of industrial revenue bonds issued  
0216 prior to July 1, 1973, in accordance with the provisions of K.S.A.  
0217 12-1740 through 12-1749, and amendments thereto, and any city  
0218 or lessee renting or leasing such machinery, equipment or other  
0219 personal property purchased with the proceeds of such bonds  
0220 who shall have paid a tax under the provisions of this section  
0221 upon sales made prior to July 1, 1973, shall be entitled to a  
0222 refund from the sales tax refund fund of all taxes paid thereon;
- 0223 (i) a tax at the rate of 4% upon the gross receipts from the  
0224 rendering of dry cleaning, pressing, dyeing and laundry services  
0225 except laundry services rendered through a coin-operated device  
0226 whether automatic or manually operated;
- 0227 (j) a tax at the rate of 4% upon the gross receipts from the  
0228 rendering of the services of washing and washing and waxing of  
0229 vehicles;
- 0230 (k) a tax at the rate of 4% upon the gross receipts from cable,

0231 community antennae and other subscriber radio and television  
0232 services;

0233 (l) a tax at the rate of 4% upon the gross receipts received  
0234 from the sales of tangible personal property to all contractors,  
0235 subcontractors or repairmen of materials and supplies for use by  
0236 them in erecting structures for others, or building on, or other-  
0237 wise improving, altering, or repairing real or personal property of  
0238 others;

0239 (m) a tax at the rate of 4% upon the gross receipts received  
0240 from fees and charges by public and private clubs, drinking  
0241 establishments, organizations and businesses for participation in  
0242 sports, games and other recreational activities;

0243 (n) a tax at the rate of 4% upon the gross receipts received  
0244 from dues charged by public and private clubs, drinking estab-  
0245 lishments, organizations and businesses, payment of which en-  
0246 titles a member to the use of facilities for recreation or enter-  
0247 tainment;

0248 (o) a tax at the rate of 4% upon the gross receipts received  
0249 from the isolated or occasional sale of motor vehicles or trailers  
0250 but not including the transfer of motor vehicles or trailers by a  
0251 person to a corporation solely in exchange for stock or securities  
0252 in such corporation or the transfer of motor vehicles or trailers by  
0253 one corporation to another when all of the assets of such corpo-  
0254 ration are transferred to such other corporation. In determining  
0255 the base for computing the tax on such isolated or occasional  
0256 sale, the fair market value of any motor vehicle or trailer traded  
0257 in by the purchaser to the seller may be deducted from the  
0258 selling price;

0259 (p) a tax at the rate of 4% upon the gross receipts received for  
0260 the service of installing or applying tangible personal property  
0261 which when installed or applied is not being held for sale in the  
0262 regular course of business, and whether or not such tangible  
0263 personal property when installed or applied remains tangible  
0264 personal property or becomes a part of real estate, except that no  
0265 tax shall be imposed upon the service of installing or applying  
0266 tangible personal property in connection with the original con-  
0267 struction of a building or facility or the construction, reconstruc-

0268 tion, restoration, replacement or repair of a bridge or highway.

0269 For the purposes of this subsection:

0270 (1) "Original construction" shall mean the first or initial  
0271 construction of a new building or facility. The term "original  
0272 construction" shall include the addition of an entire room or floor  
0273 to any existing building or facility;

and

12

0274 ished portion of any existing building or facility and the restora-  
0275 tion, reconstruction or replacement of a building or facility  
0276 damaged or destroyed by fire, flood, windstorm, hailstorm, rain-  
0277 storm, snowstorm, lightning, explosion or earthquake, but such

. Such

0278 term shall not include replacement, remodeling, restoration,  
0279 renovation or reconstruction under any other circumstances;

0280 (2) "building" shall mean only those enclosures within  
0281 which individuals customarily live or are employed, or which are  
0282 customarily used to house machinery, equipment or other prop-  
0283 erty, and including the land improvements immediately sur-  
0284 rounding such building; and

0285 (3) "facility" shall mean a mill, plant, refinery, oil or gas well,  
0286 water well, feedlot or any conveyance, transmission or distribu-  
0287 tion line of any cooperative, nonprofit, membership corporation  
0288 organized under or subject to the provisions of K.S.A. 17-4601 *et*  
0289 *seq.*, and amendments thereto, or of any municipal or quasi-mu-  
0290 nicipal corporation, including the land improvements immedi-  
0291 ately surrounding such facility;

13

0292 (q) a tax at the rate of 4% upon the gross receipts received for  
0293 the service of repairing, servicing, altering or maintaining tangi-

, cleaning

, except computer software described in subsection (s),

8

0294 ble personal property which when such services are rendered is  
0295 not being held for sale in the regular course of business, and  
0296 whether or not any tangible personal property is transferred in  
0297 connection therewith. The tax imposed by this subsection shall  
0298 be applicable to the services of repairing, servicing, altering or  
0299 maintaining an item of tangible personal property which has  
0300 been and is fastened to, connected with or built into real prop-  
0301 erty;

0302 (r) a tax at the rate of 4% upon the gross receipts from fees or  
0303 charges made under service or maintenance agreement contracts  
0304 ~~for computer software and~~ for services, charges for the providing

13  
cleaning

0305 of which are, taxable under the provisions of subsection (p) or  
0306 (q); and

0307 (s) a tax at the rate of 4% upon the gross receipts received  
0308 from the sale of computer software. As used in this subsection,  
0309 "computer software" means information and directions loaded  
0310 into a computer which dictate different functions to be per-  
0311 formed by the computer, ~~whether contained on tapes, discs,~~  
0312 ~~cards or other devices or materials.~~

8  
modification, alteration,  
updating or maintenance

See attached page

0313 Sec. 3. K.S.A. 79-3609 is hereby amended to read as follows:  
0314 79-3609. Every person engaged in the business of selling tangi-  
0315 ble personal property at retail or furnishing services taxable  
0316 hereunder in this state, shall keep records and books of all such  
0317 sales, together with invoices, bills of lading, sales records, copies  
0318 of bills of sale and other pertinent papers and documents. Such  
0319 books and records and other papers and documents shall, at all  
0320 times during business hours of the day, be available for and  
0321 subject to inspection by the director, or the director's duly  
0322 authorized agents and employees, for a period of three (3) years  
0323 from the last day of the calendar year or of the fiscal year of the  
0324 retailer, whichever comes later, to which the records pertain.  
0325 Such records shall be preserved during the entire period during  
0326 which they are subject to inspection by the director, unless the  
0327 director in writing previously authorizes their disposal.

0328 The amount of tax imposed by this act is to be assessed within  
0329 three (3) years after the return is filed, and no proceedings in  
0330 court for the collection of such taxes shall be begun after the  
0331 expiration of such period. In the case of a false or fraudulent  
0332 return with intent to evade tax, the tax may be assessed or a  
0333 proceeding in court for collection of such tax may be begun at  
0334 any time, within two (2) years from the discovery of such fraud.  
0335 ~~In no event shall an assessment be made for any period preced-~~  
0336 ~~ing the date of registration of the retailer by more than three~~  
0337 ~~years.~~ No refund or credit shall be allowed by the director after  
0338 three (3) years from the date of payment of the tax as provided in  
0339 this act unless before the expiration of such period a claim  
0340 therefor is filed by the taxpayer, and no suit or action to recover  
0341 on any claim for refund shall be commenced until after the

8

Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software. Computer software does not include any custom computer program which is written or prepared exclusively for a single end user and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a single end user. Modification to an existing prewritten program to meet a single end user's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements and other billing documents provided to the end user.

For purposes of this subsection, the modification, alteration, updating and maintenance of computer software shall not include the modification, alteration, updating and maintenance of computer software intended for sale to a single end user. Any of the services enumerated herein which are required to be provided by contract shall be taxable whether or not the services are actually provided.

11 (t) a tax at the rate of 4% upon the gross receipts from mobile phone services, cellular phone services, beeper services, and other similar services.

0342 expiration of six (6) months from the date of filing a claim  
0343 therefor with the director.

0344 Before the expiration of time prescribed in this section for the  
0345 assessment of additional tax or the filing of a claim for refund, the  
0346 director is hereby authorized to enter into an agreement in  
0347 writing with the taxpayer consenting to the extension of the  
0348 periods of limitations for the assessment of tax or for the filing of  
0349 a claim for refund, at any time prior to the expiration of the  
0350 period of limitations. The period so agreed upon may be ex-  
0351 tended by subsequent agreements in writing made before the  
0352 expiration of the period previously agreed upon. In considera-  
0353 tion of such agreement or agreements, interest due in excess of  
0354 ~~forty-eight (48)~~ 48 months on any additional tax shall be waived.

0355 Sec. 4. K.S.A. 79-3609 and K.S.A. 1987 Supp. 79-3602 and  
0356 79-3603 are hereby repealed.

0357 Sec. 5. This act shall take effect and be in force from and  
0358 after its publication in the statute book.