

Approved: 3-22-00  
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:10 a.m. on March 14, 2000, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Shirley Sicilian, Kansas Department of Revenue

Others attending: See attached list.

The minutes of March 8 and 9, 2000, were approved.

**Integrated plant theory relative to sales tax exemption for manufacturing machinery and equipment**

Senator Langworthy reminded the Committee that a bill regarding the integrated plant theory passed the House in the 1999 Session and that Shirley Sicilian, Kansas Department of Revenue, presented an informational briefing to the Committee on February 1, 2000. She called upon Ms. Sicilian to refresh the Committee members' memories and to describe the changes necessary to help business and economic development and at the same time protect the integrity of the State General Fund. Copies of **HB 2011** as amended to address the issue had been distributed to the Committee. (Attachment 1)

Ms. Sicilian explained the following proposed amendments to **HB 2011**:

- The first set of amendments to the bill, found on pages 12 through 19, would move Kansas from a state that employs the Ohio Rule plus some integrated plant characteristics to a pure integrated plant rule. The specific language, which first appeared three sessions ago, was proposed by the Governor. The Department, the industry, and the Governor's office worked together to modify that language. An interim committee then passed out the modified language. That language was heard during the 1999 Legislative Session and in the current session. This fiscal note for this portion of the bill is \$4.3 million.
- The bill would eliminate the statute of limitations on filing for sales and use tax refunds based upon the provisions of K.S.A. 1999 Supp. 79-3606(kk). Ms. Sicilian noted that, technically, the statute of limitations is a remedy, not a right, allowed by the Legislature, and it can be removed.
- The bill would also eliminate refunds based upon the provisions in subsection (n) pursuant to the finding by the Kansas Court of Appeals in the Water District No. 1 of Johnson County case for tax paid prior to the effective date of the bill.

Ms. Sicilian noted that the provision for the elimination of refunds under (kk) has a positive fiscal impact. The provision for the elimination of refunds under (kk) would have a positive fiscal impact of \$7 million because the Department does routinely grant refunds. She explained that the cut off date for refunds under both (kk) and (n) is the date of the court case, August 13, 1999.

Senator Lee asked how the bill places Kansas in relation to other states. Ms. Sicilian, responded that a reporting service (BNA) lists several states that currently have the integrated plant theory, including the surrounding states of Missouri, Colorado, Oklahoma, Indiana, and Arkansas. Kansas is not listed among

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE  
Room 519-S, Statehouse, at 11:10 a.m. on March 14, 2000.

those states having the Ohio Rule. Ms. Sicilian believes Kansas is not included either because it has an Ohio Rule plus some integrated plant concepts or because the courts continue to broaden this exemption. She said Oklahoma and Missouri are on the list with a notation that the rule is being broadened by the state supreme court. She commented that the bill would provide a legislative broadening rather than a court interpreted integrated plant doctrine.

Committee discussion followed at which time Senator Langworthy noted that the straight integrated plant bill before the Committee is exactly what proponents requested in the 1999 Legislative Session. She pointed out that a request for refunds was not part of the 1999 proposal. It is her hope that proponents will be pleased to have the bill passed and will be willing to forego any refunds as a result of the court case. She feels it is the responsibility of the Committee and the Legislature to protect the integrity of the State General Fund over interests of corporate big business. In this regard, Senator Bond commented that the court case provided an unintended, unanticipated potential windfall in terms of going back several years for a refund. The state cannot afford those refunds, but it can give the business entities what they originally requested, which is what the bill does.

Chris Courtwright, Legislative Research Department, discussed the fiscal note for **HB 2011** as amended. At the outset, he noted that the original bill approved by the House in 1999 would have exempted purchases of various water districts from sales tax. The proposed amendments to the bill remove those provisions. The newly modified integrated plant provisions that are amendments to subsection (kk) prospectively are expected to reduce sales tax receipts, but elimination of any refunds to subsection (kk) would be expected to increase receipts for several fiscal years.

Mr. Courtwright reported that is anticipated that the Consensus Revenue Estimating Group will reduce the overall sales tax estimate by an additional \$3 million for fiscal year 2001 because of the prospective application of the court decision in subsection (n). The provision eliminating subsection (n) refunds does not have a fiscal note relative to the current estimate, since payment of those refunds was not contemplated when the estimate was made in November of 1999. However, if those refunds are not eliminated, the Consensus Group would be expected to reduce the overall estimate for sales tax receipts by an additional \$9 million in April (for a total of \$12 million). In this regard, Mr. Courtwright called the Committee's attention to a chart concerning fiscal years 2001 through 2005 included in a supplement note on the bill. (Attachment 2)

Senator Langworthy observed that, if the Committee does nothing on the issue in subsection (n), the state will lose \$12 million a year for three years. With anticipated losses which could result from other court cases, the figure could be as high as \$48 million.

Senator Bond moved to amend **HB 2011** as proposed and to report **HB 2011** as amended favorable for passage, seconded by Senator Steineger. The motion carried.

The meeting was adjourned at 11:35 a.m.

The next meeting is scheduled for March 15, 2000.



On page 1, by striking all in lines 15 through 43;

By striking all on pages 2 through 12;

On page 13, by striking all in lines 1 through 36 and inserting the following:

"Section 1. K.S.A. 1999 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 1999 Supp. 65-3424d, and amendments thereto, and drycleaning and laundry services taxed pursuant to K.S.A. 1999 Supp. 65-34,150, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, water, electricity or heat to others and such items of personal property

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or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state, the total cost of which is paid from funds of such political subdivision and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state. As used in this subsection, K.S.A.

12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, hospital or public hospital authority, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will

not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, hospital or public hospital authority, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a

form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using directly or through an authorized agent such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States;

(h) all rentals of nonsectarian textbooks by public or



private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation

of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs, as defined by K.S.A. 65-1626 and amendments thereto, dispensed pursuant to a prescription order, as defined by K.S.A. 65-1626 and amendments thereto, by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto;

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of prosthetic and orthopedic appliances prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection, the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body; used to alleviate the malfunction of any part of the body; or used to assist any disabled person in leading a normal life by facilitating such person's mobility; such term shall include accessories attached or to be attached to motor vehicles, but such term shall not include motor vehicles or personal property which when installed becomes a fixture to real property;

(s) all sales of tangible personal property or services purchased directly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 et seq. and amendments thereto, which property or services are used in the operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment or aquaculture machinery and equipment" shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of food products to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service

designated by the private nonprofit organization, and all sales of food products for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b Second through Sixth. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418 and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) "Mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202

and amendments thereto; and (2) "sales of used mobile homes or manufactured homes" means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto. As used in this subsection, "business" and "retail business" have the meanings respectively ascribed

thereto by K.S.A. 74-50,114 and amendments thereto;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental retardation facility or mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto. This exemption shall not apply to tangible

personal property customarily used for human habitation purposes;

(kk) ~~on-and-after-January-1,1989,all--sales--of--machinery and--equipment--used--directly--and--primarily--for--the--purposes--of manufacturing,--assembling,--processing,--finishing,--storing, warehousing--or--distributing--articles--of--tangible--personal property--in--this--state--intended--for--resale--by--a--manufacturing--or processing--plant--or--facility--or--a--storage,--warehousing--or distribution--facility,--and--all--sales--of--repair--and--replacement parts--and--accessories--purchased--for--such--machinery--and--equipment:~~

~~(1)--For--purposes--of--this--subsection,--machinery--and--equipment shall--be--deemed--to--be--used--directly--and--primarily--in--the manufacture,--assemblage,--processing,--finishing,--storing, warehousing--or--distributing--of--tangible--personal--property--where such--machinery--and--equipment--is--used--during--a--manufacturing, assembling,--processing--or--finishing,--storing,--warehousing--or distributing--operation:~~

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

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

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

~~(D)--to--transport,--convey--or--handle--such--property--during--the manufacturing,--processing,--storing,--warehousing--or--distribution operation--at--the--plant--or--facility,--or~~

~~(E)--to--place--such--property--in--the--container,--package--or wrapping--in--which--such--property--is--normally--sold--or--transported:~~

~~(2)-----For--purposes--of--this--subsection--"machinery--and equipment--used--directly--and--primarily"--shall--include,--but--not--be limited--to:~~

~~(A)--Mechanical--machines--or--components--thereof--contributing to--a--manufacturing,--assembling--or--finishing--process;~~

~~(B)--molds--and--dies--that--determine--the--physical~~

characteristics---of---the---finished---product---or---its---packaging material;

(C)---testing---equipment---to---determine---the---quality---of---the finished-product;

(D)---computers-and-related-peripheral-equipment-that-directly control---or---measure---the---manufacturing---process---or---which---are utilized-for-engineering-of-the-finished-product;-and

(E)---computers-and-related-peripheral-equipment-utilized---for research-and-development-and-product-design.

(3)---"Machinery---and---equipment---used-directly-and-primarily" shall-not-include:

(A)---Hand-tools;

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

(C)---transportation---equipment-not-used-in-the-manufacturing, assembling,-,-processing,-,-furnishing,-,-storing,-,-warehousing---or distributing-process-at-the-plant-or-facility;

(D)---office---machines---and---equipment-including-computers-and related-peripheral-equipment-not-directly-and-primarily---used---in controlling-or-measuring-the-manufacturing-process;

(E)---furniture-and-buildings;-and

(F)---machinery---and---equipment---used---in---administrative, accounting,-,-sales-or-other-such-activities-of-the-business;

(4)---for-purposes-of-this-subsection,-,"repair-and-replacement parts-and-accessories"-means-all-parts-and-accessories-for-exempt machinery-and-equipment,-including-but-not-limited-to-dies,-jigs, molds,-and-patterns-which-are-attached---to---exempt---machinery---or which---are---otherwise-used-in-production,-short-lived-replaceable parts-that-can-be---readily---detached---from---exempt---machinery---or equipment,-,-such---as---belts,-drill-bits,-grinding-wheels,-cutting bars---and---saws,-,-and---other---replacement---parts---for---production equipment,-including-refractory-brick-and-other-refractory---items for-kiln-equipment-used-in-production-operations

(1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated



production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) "Integrated production operation" means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) "production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) "manufacturing or processing plant or facility" means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) "manufacturing or processing business" means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and

retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair

tangible personal property for its owner;

(E) "repair and replacement parts and accessories" means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) "primary" or "primarily" mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing

business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including mobile cement mixer trucks; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation equipment not primarily used in a production, warehousing or material handling operation at the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health;

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease; and

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers; and

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such



organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to

have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from

federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined

that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund 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. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. 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 or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and

which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined

that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue; and

(eee) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto; and

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state;

all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation.

Sec. 2. K.S.A. 79-3609 is hereby amended to read as follows:  
79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption. Any retailer asserting a

claim that certain sales are exempt who does not have the required exemption certificates in possession shall acquire such certificates within 60 days after receiving notice from the director that such certificates are required. If such certificates are not obtained within the period set forth herein, the sales shall be deemed to be taxable sales under this act.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. No refund or credit shall be allowed by the director after three years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) For all taxable periods subject to assessment on January 1, 1998, including periods subject to an agreement to extend the



statute of limitations, and for all taxable periods commencing after December 31, 1997, interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the due date of the return if it was timely filed and accompanied by the tax due or, if the return was not timely filed, from the date of payment, except that no interest shall be allowed on any such refund if the same is paid within 60 days after the date of the return or the date of payment, as the case requires.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act shall be allowed.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled In re appeal of Water District No. 1 of Johnson County shall be allowed for tax paid prior to the effective date of this act.

Sec. 3. K.S.A. 79-3609 and K.S.A. 1999 Supp. 79-3606 are hereby repealed.";

By renumbering existing section 3 as section 4;

In the title, in line 10, by striking all after "exempting"; in line 11, by striking all before the semicolon and inserting "sales of certain business machinery and equipment; concerning certain refunds"; also in line 11, by striking "1998" and inserting "79-3609 and K.S.A. 1999"; in line 12, by striking "section" and inserting "sections".

SESSION OF 2000

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2011**

As Amended by Senate Committee on  
Assessment and Taxation

**Brief\***

HB 2011, as amended, would amend KSA 1999 Supp. 79-3606(kk) to provide a modified "integrated plant" theory relative to the manufacturing machinery and equipment sales tax exemption contained therein.

Specifically, all sales of machinery and equipment used in the state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility would be exempt, as would sales of installation, maintenance, and repair services performed on such machinery and equipment and repair and replacement parts and accessories for such machinery and equipment.

Machinery and equipment would be deemed to qualify for the exemption when used:

- to receive, transport, convey, handle, treat, or store raw materials in preparation for placement on a production line;
- to transport, convey, handle, or store property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution of the final product occurring at the plant or facility;
- to act upon, effect, promote, or otherwise facilitate a physical change to the property undergoing manufacturing or processing;
- to guide, control, or direct the movement of the property undergoing manufacturing or processing;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at [http://www.ink.org/public/legislative/bill\\_search.html](http://www.ink.org/public/legislative/bill_search.html)

Senate Assessment + Taxation  
3-14-00  
Attachment 2

- to test or measure, when a necessary part of the integrated production operation, raw materials, the property undergoing manufacturing or processing, or the physical product;
- to plan, manage, control, or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of property undergoing manufacturing or processing, and the management of inventories of the finished product;
- to produce energy for, lubricate, control the operating of, or otherwise enable the functioning of other production machinery and equipment, and the continuation of production operations;
- to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;
- to transmit or transport electricity, coke, gas, water, steam, or similar substances used in production operations from the point of generation, if produced at the plant site, to the production operation (or, if purchased or delivered from offsite, from the point where such substance enters the plant to the actual production operation);
- to cool, heat, filter, refine, or otherwise treat water, steam, acid, oil, solvents, or other substances used in production operations;
- to provide environmental controls essential to the production process;
- to treat, transport, and store waste or other byproducts of production operations; and
- to control pollution at the plant or facility.

However, certain kinds of machinery and equipment would be deemed to be exempt even though it may not otherwise qualify under the integral or essential part text, including:

- computers and related equipment utilized for engineering of the finished product or for research and development or product design;
- machinery and equipment utilized to manufacture or rebuild tangible personal property used in manufacturing or processing operations;
- portable plants for aggregate concrete, bulk cement, and asphalt, including mobile cement mixer trucks;
- industrial fixtures, devices, support facilities, and special foundations necessary for manufacturing and production operations, as well as materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities, and foundations; and
- laboratory equipment not located at the plant or facility which would otherwise qualify for the exemption.

Machinery and equipment would NOT qualify for the exemption when used:

- for nonproduction purposes such as plant security, fire prevention, first aid, accounting, administration, record-keeping, advertising, marketing, sales, cleaning, communications, and employee work-scheduling;
- primarily in maintaining and repairing any type of machinery and equipment or the building or plant; and
- for general plant heating, cooling, and lighting.

Additional types of machinery and equipment which would be excluded from the exemption would include:

- certain transportation equipment not primarily used in a production, warehousing, or material-handling operation;

- office machines and equipment (including computers) not used directly and primarily to measure or control the manufacturing process;
- furniture and other furnishings;
- buildings and any other part of real estate that is not otherwise exempt;
- building fixtures not integral to the manufacturing operation;
- motor vehicles registered for operation on public highways; and
- employee apparel, with the exception of safety and protective apparel purchased by employers and furnished gratuitously to employees involved in research or production.

Sales tax exemptions also would be provided for all sales of material-handling equipment, racking systems, and other related machinery and equipment used for handling, movement, or storage of tangible personal property in a warehouse or distribution facility in the state; for sales of installation, repair, and maintenance services performed on such machinery and equipment; and for sales of repair and replacement parts for such machinery and equipment.

Another provision would eliminate sales and use tax refunds based upon the provisions of KSA 1999 Supp. 79-3606(kk) in existence prior to the effective date of the bill.

A similar provision would eliminate sales and use tax refunds based upon the provisions of KSA 1999 Supp. 79-3606(n) pursuant to its interpretation by the Kansas Court of Appeals in the *In re Appeal of Water District No. 1 of Johnson County* case for tax paid prior to the effective date of the bill.

## **Background**

The original bill approved by the House during the 1999 Session would have exempted purchases of various water districts, including indirect purchases made on behalf of such districts by contractors.

The Senate Committee amended the bill to remove those provisions and insert all other provisions hereinbefore described.

Fiscal information provided by the Kansas Department of Revenue indicated that the modified integrated plant provisions would be expected to reduce receipts relative to current law on an ongoing basis, but that the elimination of refunds relative to subsection (kk) would be expected to increase receipts for several fiscal years.

As it currently stands, the Consensus Estimating Group would be expected to reduce further the overall sales tax estimate by an additional \$3 million beginning in FY 2001 because of the prospective application of the court decision to subsection (n). The provision eliminating subsection (n) refunds does not have a fiscal note relative to the current estimate, since payment of those refunds was not contemplated when such estimate was made in November. But if those refunds are NOT eliminated, the Consensus group would be expected to reduce the overall estimate for sales tax receipts by an additional \$9 million in April (for a total of \$12 million).

(\$ in millions)

|                                                                                                       | Fiscal Year     |                 |                 |                 |                 | Cumulative<br>Total |
|-------------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|---------------------|
|                                                                                                       | 2001            | 2002            | 2003            | 2004            | 2005            |                     |
| new kk language                                                                                       | (\$4.30)        | (\$4.88)        | (\$5.07)        | (\$5.28)        | (\$5.49)        | (\$25.02)           |
| eliminate kk refunds                                                                                  | \$7.00          | \$4.67          | \$2.33          | 0               | 0               | \$14.00             |
| <b>Total impact</b>                                                                                   | <b>\$2.70</b>   | <b>(\$0.21)</b> | <b>(\$2.74)</b> | <b>(\$5.28)</b> | <b>(\$5.49)</b> | <b>(\$11.02)</b>    |
| SGF                                                                                                   | \$2.56          | (\$0.20)        | (\$2.60)        | (\$5.01)        | (\$5.21)        | (\$10.45)           |
| SHF                                                                                                   | \$0.14          | (\$0.01)        | (\$0.14)        | (\$0.27)        | (\$0.28)        | (\$0.56)            |
| <b>Additional Revenue Loss from Court Case Expected to be Acknowledged in New Consensus Estimates</b> |                 |                 |                 |                 |                 |                     |
| <b>Total impact</b>                                                                                   | <b>(\$3.00)</b> | <b>(\$3.12)</b> | <b>(\$3.24)</b> | <b>(\$3.37)</b> | <b>(\$3.51)</b> | <b>(\$16.25)</b>    |
| SGF                                                                                                   | (\$2.85)        | (\$2.96)        | (\$3.08)        | (\$3.20)        | (\$3.33)        | (\$15.42)           |
| SHF                                                                                                   | (\$0.15)        | (\$0.16)        | (\$0.17)        | (\$0.17)        | (\$0.18)        | (\$0.83)            |
| <b>Net Change Relative to Governor's Budget - SGF Only (Sum of SGF lines above)</b>                   |                 |                 |                 |                 |                 |                     |
|                                                                                                       | <b>(\$0.28)</b> | <b>(\$3.16)</b> | <b>(\$5.68)</b> | <b>(\$8.21)</b> | <b>(\$8.54)</b> | <b>(\$25.87)</b>    |

State Gen. Fund  
State Highway Fund