

CHAPTER 91  
HOUSE BILL No. 2288

AN ACT concerning sales taxation; relating to exemption certificates; amending K.S.A. 2004 Supp. 79-3651 and repealing the existing section.

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

Section 1. K.S.A. 2004 Supp. 79-3651 is hereby amended to read as follows: 79-3651. (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the seller unless the seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the seller from collecting and remitting tax if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption shall not be relieved from such liability. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.

(c) The exemption certificate shall be substantially in such form as the director may prescribe. The seller shall use the standard form for claiming an exemption electronically as adopted by the director. A seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by \$250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by an entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, based on the status of the entity shall bear the name, address of the entity and identification number issued to the entity pursuant to K.S.A. 2004 Supp. 79-3692, and amendments thereto, and indicate the subsection under which the exemption is being claimed. Such certificate shall be signed by an officer, office manager or other administrator of the nonprofit entity, if in paper form, and contain the ~~driver's license number of the signer~~ *tax identification number of the entity*. The certificate shall be substantially in such form as the director may prescribe. Payments made on an exempt entity's check, warrant, voucher or is charged to the entity's account shall relieve the seller from collecting and remitting the tax if it is taken in good faith.

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full

amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

Sec. 2. K.S.A. 2004 Supp. 79-3651 is hereby repealed.

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

Approved April 7, 2005.

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