

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2117

By Committee on Taxation

1-27

1 AN ACT concerning sales **and use** taxation; relating to imposition of
2 tax; exemptions; amending K.S.A. 2010 Supp. 79-3603 **and 79-**
3 **3703** and repealing the existing ~~section~~ **sections**.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 79-3603 is hereby amended to read
7 as follows: 79-3603. For the privilege of engaging in the business of
8 selling tangible personal property at retail in this state or rendering or
9 furnishing any of the services taxable under this act, there is hereby
10 levied and there shall be collected and paid a tax at the rate of 5.3%,
11 and commencing July 1, 2010, at the rate of 6.3%, and commencing
12 July 1, 2013, at the rate of 5.7%. ~~Within a redevelopment district~~
13 ~~established pursuant to K.S.A. 74-8921, and amendments thereto, there~~
14 ~~is hereby levied and there shall be collected and paid an additional tax~~
15 ~~at the rate of 2% until the earlier of the date the bonds issued to finance~~
16 ~~or refinance the redevelopment project have been paid in full or the~~
17 ~~final scheduled maturity of the first series of bonds issued to finance~~
18 ~~any part of the project upon:~~

19 (a) The gross receipts received from the sale of tangible personal
20 property at retail within this state;

21 (b) the gross receipts from intrastate, interstate or international
22 telecommunications services and any ancillary services sourced to this
23 state in accordance with K.S.A. 2010 Supp. 79-3673, and amendments
24 thereto, except that telecommunications service does not include: (1)
25 Any interstate or international 800 or 900 service; (2) any interstate or
26 international private communications service as defined in K.S.A. 2010
27 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
28 data service; (4) any telecommunication service to a provider of
29 telecommunication services which will be used to render
30 telecommunications services, including carrier access services; or (5)
31 any service or transaction defined in this section among entities
32 classified as members of an affiliated group as provided by section
33 1504 of the federal internal revenue code of 1986, as in effect on

1 January 1, 2001;

2 (c) the gross receipts from the sale or furnishing of gas, water,
3 electricity and heat, which sale is not otherwise exempt from taxation
4 under the provisions of this act, and whether furnished by municipally
5 or privately owned utilities, except that, on and after January 1, 2006,
6 for sales of gas, electricity and heat delivered through mains, lines or
7 pipes to residential premises for noncommercial use by the occupant of
8 such premises, and for agricultural use and also, for such use, all sales
9 of propane gas, the state rate shall be 0%; and for all sales of propane
10 gas, LP gas, coal, wood and other fuel sources for the production of
11 heat or lighting for noncommercial use of an occupant of residential
12 premises, the state rate shall be 0%, but such tax shall not be levied and
13 collected upon the gross receipts from: (1) The sale of a rural water
14 district benefit unit; (2) a water system impact fee, system enhancement
15 fee or similar fee collected by a water supplier as a condition for
16 establishing service; or (3) connection or reconnection fees collected by
17 a water supplier;

18 (d) the gross receipts from the sale of meals or drinks furnished at
19 any private club, drinking establishment, catered event, restaurant,
20 eating house, dining car, hotel, drugstore or other place where meals or
21 drinks are regularly sold to the public;

22 (e) the gross receipts from the sale of admissions to any place
23 providing amusement, entertainment or recreation services including
24 admissions to state, county, district and local fairs, but such tax shall
25 not be levied and collected upon the gross receipts received from sales
26 of admissions to any cultural and historical event which occurs
27 triennially;

28 (f) the gross receipts from the operation of any coin-operated
29 device dispensing or providing tangible personal property, amusement
30 or other services except laundry services, whether automatic or
31 manually operated;

32 (g) the gross receipts from the service of renting of rooms by
33 hotels, as defined by K.S.A. 36-501, and amendments thereto, or by
34 accommodation brokers, as defined by K.S.A. 12-1692, and
35 amendments thereto but such tax shall not be levied and collected upon
36 the gross receipts received from sales of such service to the federal
37 government and any agency, officer or employee thereof in association
38 with the performance of official government duties;

39 (h) the gross receipts from the service of renting or leasing of

1 tangible personal property except such tax shall not apply to the renting
2 or leasing of machinery, equipment or other personal property owned
3 by a city and purchased from the proceeds of industrial revenue bonds
4 issued prior to July 1, 1973, in accordance with the provisions of
5 K.S.A. 12-1740 through 12-1749, and amendments thereto, and any
6 city or lessee renting or leasing such machinery, equipment or other
7 personal property purchased with the proceeds of such bonds who shall
8 have paid a tax under the provisions of this section upon sales made
9 prior to July 1, 1973, shall be entitled to a refund from the sales tax
10 refund fund of all taxes paid thereon;

11 (i) the gross receipts from the rendering of dry cleaning, pressing,
12 dyeing and laundry services except laundry services rendered through a
13 coin-operated device whether automatic or manually operated;

14 (j) the gross receipts from the rendering of the services of washing
15 and washing and waxing of vehicles;

16 (k) the gross receipts from cable, community antennae and other
17 subscriber radio and television services;

18 (l) (1) except as otherwise provided by paragraph (2), the gross
19 receipts received from the sales of tangible personal property to all
20 contractors, subcontractors or repairmen for use by them in erecting
21 structures, or building on, or otherwise improving, altering, or repairing
22 real or personal property.

23 (2) Any such contractor, subcontractor or repairman who
24 maintains an inventory of such property both for sale at retail and for
25 use by them for the purposes described by paragraph (1) shall be
26 deemed a retailer with respect to purchases for and sales from such
27 inventory, except that the gross receipts received from any such sale,
28 other than a sale at retail, shall be equal to the total purchase price paid
29 for such property and the tax imposed thereon shall be paid by the
30 deemed retailer;

31 (m) the gross receipts received from fees and charges by public
32 and private clubs, drinking establishments, organizations and
33 businesses for participation in sports, games and other recreational
34 activities, but such tax shall not be levied and collected upon the gross
35 receipts received from: (1) Fees and charges by any political
36 subdivision, by any organization exempt from property taxation
37 pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments
38 thereto, or by any youth recreation organization exclusively providing
39 services to persons 18 years of age or younger which is exempt from

1 federal income taxation pursuant to section 501(c)(3) of the federal
2 internal revenue code of 1986, for participation in sports, games and
3 other recreational activities; and (2) entry fees and charges for
4 participation in a special event or tournament sanctioned by a national
5 sporting association to which spectators are charged an admission
6 which is taxable pursuant to subsection (e);

7 (n) the gross receipts received from dues charged by public and
8 private clubs, drinking establishments, organizations and businesses,
9 payment of which entitles a member to the use of facilities for
10 recreation or entertainment, but such tax shall not be levied and
11 collected upon the gross receipts received from: (1) Dues charged by
12 any organization exempt from property taxation pursuant to paragraphs
13 *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2)
14 sales of memberships in a nonprofit organization which is exempt from
15 federal income taxation pursuant to section 501 (c)(3) of the federal
16 internal revenue code of 1986, and whose purpose is to support the
17 operation of a nonprofit zoo;

18 (o) the gross receipts received from the isolated or occasional sale
19 of motor vehicles or trailers but not including: (1) The transfer of motor
20 vehicles or trailers by a person to a corporation or limited liability
21 company solely in exchange for stock securities or membership interest
22 in such corporation or limited liability company; ~~or~~ (2) the transfer of
23 motor vehicles or trailers by one corporation or limited liability
24 company to another when all of the assets of such corporation or
25 limited liability company are transferred to such other corporation or
26 limited liability company; or (3) the sale of motor vehicles or trailers
27 which are subject to taxation pursuant to the provisions of K.S.A. 79-
28 5101 et seq., and amendments thereto, by an immediate family member
29 to another immediate family member. For the purposes of clause (3),
30 immediate family member means lineal ascendants or descendants, and
31 their spouses. ~~Any amount of sales tax paid pursuant to the Kansas~~
32 ~~retailers sales tax act on the isolated or occasional sale of motor~~
33 ~~vehicles or trailers on and after July 1, 2004, which the base for~~
34 ~~computing the tax was the value pursuant to subsections (a), (b)(1) and~~
35 ~~(b)(2) of K.S.A. 79-5105, and amendments thereto, when such amount~~
36 ~~was higher than the amount of sales tax which would have been paid~~
37 ~~under the law as it existed on June 30, 2004, shall be refunded to the~~
38 ~~taxpayer pursuant to the procedure prescribed by this section. Such~~
39 ~~refund shall be in an amount equal to the difference between the~~

1 ~~amount of sales tax paid by the taxpayer and the amount of sales tax~~
2 ~~which would have been paid by the taxpayer under the law as it existed~~
3 ~~on June 30, 2004. Each claim for a sales tax refund shall be verified~~
4 ~~and submitted not later than six months from the effective date of this~~
5 ~~act to the director of taxation upon forms furnished by the director and~~
6 ~~shall be accompanied by any additional documentation required by the~~
7 ~~director. The director shall review each claim and shall refund that~~
8 ~~amount of tax paid as provided by this act. All such refunds shall be~~
9 ~~paid from the sales tax refund fund, upon warrants of the director of~~
10 ~~accounts and reports pursuant to vouchers approved by the director of~~
11 ~~taxation or the director's designee. No refund for an amount less than~~
12 ~~\$10 shall be paid pursuant to this act. In determining the base for~~
13 ~~computing the tax on such isolated or occasional sale, the fair market~~
14 ~~value of any motor vehicle or trailer traded in by the purchaser to the~~
15 ~~seller may be deducted from the selling price;~~

16 (p) the gross receipts received for the service of installing or
17 applying tangible personal property which when installed or applied is
18 not being held for sale in the regular course of business, and whether or
19 not such tangible personal property when installed or applied remains
20 tangible personal property or becomes a part of real estate, except that
21 no tax shall be imposed upon the service of installing or applying
22 tangible personal property in connection with the original construction
23 of a building or facility, the original construction, reconstruction,
24 restoration, remodeling, renovation, repair or replacement of a
25 residence or the construction, reconstruction, restoration, replacement
26 or repair of a bridge or highway.

27 For the purposes of this subsection:

28 (1) "Original construction" shall mean the first or initial
29 construction of a new building or facility. The term "original
30 construction" shall include the addition of an entire room or floor to
31 any existing building or facility, the completion of any unfinished
32 portion of any existing building or facility and the restoration,
33 reconstruction or replacement of a building, facility or utility structure
34 damaged or destroyed by fire, flood, tornado, lightning, explosion,
35 windstorm, ice loading and attendant winds, terrorism or earthquake,
36 but such term, except with regard to a residence, shall not include
37 replacement, remodeling, restoration, renovation or reconstruction
38 under any other circumstances;

39 (2) "building" shall mean only those enclosures within which

- 1 individuals customarily are employed, or which are customarily used to
2 house machinery, equipment or other property, and including the land
3 improvements immediately surrounding such building;
- 4 (3) "facility" shall mean a mill, plant, refinery, oil or gas well,
5 water well, feedlot or any conveyance, transmission or distribution line
6 of any cooperative, nonprofit, membership corporation organized under
7 or subject to the provisions of K.S.A. 17-4601 et seq., and amendments
8 thereto, or municipal or quasi-municipal corporation, including the land
9 improvements immediately surrounding such facility;
- 10 (4) "residence" shall mean only those enclosures within which
11 individuals customarily live;
- 12 (5) "utility structure" shall mean transmission and distribution
13 lines owned by an independent transmission company or cooperative,
14 the Kansas electric transmission authority or natural gas or electric
15 public utility; and
- 16 (6) "windstorm" shall mean straight line winds of at least 80 miles
17 per hour as determined by a recognized meteorological reporting
18 agency or organization;
- 19 (q) the gross receipts received for the service of repairing,
20 servicing, altering or maintaining tangible personal property which
21 when such services are rendered is not being held for sale in the regular
22 course of business, and whether or not any tangible personal property is
23 transferred in connection therewith. The tax imposed by this subsection
24 shall be applicable to the services of repairing, servicing, altering or
25 maintaining an item of tangible personal property which has been and
26 is fastened to, connected with or built into real property;
- 27 (r) the gross receipts from fees or charges made under service or
28 maintenance agreement contracts for services, charges for the providing
29 of which are taxable under the provisions of subsection (p) or (q);
- 30 (s) ~~on and after January 1, 2005,~~ the gross receipts received from
31 the sale of prewritten computer software and the sale of the services of
32 modifying, altering, updating or maintaining prewritten computer
33 software, whether the prewritten computer software is installed or
34 delivered electronically by tangible storage media physically
35 transferred to the purchaser or by load and leave;
- 36 (t) the gross receipts received for telephone answering services;
- 37 (u) the gross receipts received from the sale of prepaid calling
38 service and prepaid wireless calling service as defined in K.S.A. 2010
39 Supp. 79-3673, and amendments thereto; and

1 (v) ~~the gross receipts received from the sales of bingo cards, bingo~~
2 ~~faces and instant bingo tickets by licensees under K.S.A. 79-4701, et~~
3 ~~seq., and amendments thereto, shall be taxed at a rate of: (1) 4.9% on~~
4 ~~July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001,~~
5 ~~and before July 1, 2002; from and after July 1, 2002, all sales of bingo~~
6 ~~cards, bingo faces and instant bingo tickets by licensees under K.S.A.~~
7 ~~79-4701 et seq., and amendments thereto, shall be exempt from taxes~~
8 ~~imposed pursuant to this section.~~

9 **Sec. 2. K.S.A. 2010 Supp. 79-3703 is hereby amended to read**
10 **as follows: 79-3703. There is hereby levied and there shall be**
11 **collected from every person in this state a tax or excise for the**
12 **privilege of using, storing, or consuming within this state any**
13 **article of tangible personal property. Such tax shall be levied and**
14 **collected in an amount equal to the consideration paid by the**
15 **taxpayer multiplied by the rate of 5.3%, and commencing July 1,**
16 **2010, at the rate of 6.3%, and commencing July 1, 2013, at the rate**
17 **of 5.7%. Within a redevelopment district established pursuant to**
18 ~~K.S.A. 74-8921, and amendments thereto, there is hereby levied and~~
19 ~~there shall be collected and paid an additional tax of 2% until the earlier~~
20 ~~of: (1) The date the bonds issued to finance or refinance the~~
21 ~~redevelopment project undertaken in the district have been paid in full;~~
22 ~~or (2) the final scheduled maturity of the first series of bonds issued to~~
23 ~~finance the redevelopment project. All property purchased or leased~~
24 ~~within or without this state and subsequently used, stored or~~
25 ~~consumed in this state shall be subject to the compensating tax if~~
26 ~~the same property or transaction would have been subject to the~~
27 ~~Kansas retailers' sales tax had the transaction been wholly within~~
28 ~~this state.~~

29 ~~Sec. 3.~~ **3. K.S.A. 2010 Supp. 79-3603 and 79-3703 is are hereby**
30 **repealed.**

31 ~~Sec. 4.~~ **4. This act shall take effect and be in force from and after**
32 **its publication in the statute book.**