

HOUSE BILL No. 2617

By Committee on Vision 2020

2-2

1 AN ACT concerning sales and compensating use taxation; relating to
2 reports by retailers; requirements and duties of the Kansas department
3 of revenue; penalties; confidentiality of information; distribution of
4 revenue; creating certain funds in state treasury; amending K.S.A. 2011
5 Supp. 79-3620 and 79-3710 and repealing the existing sections.
6

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

8 New Section 1. (a) As used in the act:

- 9 (1) "Department" means the Kansas department of revenue;
10 (2) "director" means the director of taxation; and
11 (3) "purchaser" means any person who purchases or leases a product
12 for delivery to a location in this state.

13 (b) (1) A person who sells or leases a product which the storage, use
14 or consumption of such product is subject to the Kansas compensating tax
15 act or which the sale or lease of such product is subject to the Kansas
16 retailers' sales tax act, but who does not collect and remit such sales or
17 compensating use tax, shall provide the report as described in subsection
18 (b)(2).

19 (2) (A) An annual report shall be provided before December 31 of
20 each year to the department.

21 (B) The report shall include, with respect to each purchaser:

- 22 (i) The name of the purchaser;
23 (ii) the billing address; and
24 (iii) the total dollar amount of all such purchases by such purchaser
25 which were made during the prior calendar year for delivery to each such
26 address.

27 (C) The report shall be filed electronically in the form and manner
28 required by the director.

29 (c) A person who made less than \$50,000 in total gross sales during
30 the prior calendar year shall not be required to file such report required
31 pursuant to this act. A person who made less than \$50,000 in total gross
32 sales for delivery to a location in this state during the prior calendar year
33 shall not be required to file such report required pursuant to this act. Only
34 sales of at least \$100 per year, per individual purchaser are required to be
35 included in any report required pursuant to this act. A person who is
36 registered to collect and remit sales and use tax, and who complies in good

1 faith with the provisions of the Kansas retailers' sales tax act and the
2 Kansas compensating tax act, shall not be required to file such report
3 required pursuant to this act.

4 (d) (1) A person who fails to provide a report required pursuant to
5 this act shall be assessed a penalty not to exceed \$10,000 by the director
6 established by the secretary of revenue pursuant to rules and regulations
7 promulgated as directed pursuant to subsection (g).

8 (2) When assessing a penalty pursuant to this section, the director
9 may use any reasonable sampling or estimation technique where necessary
10 or appropriate to determine the number of failures in any calendar year.

11 (3) A person may protest the assessment of any such penalty or
12 interest by filing a written objection with the director within 30 days of the
13 date of assessment. Disposition of a timely filed protest shall be in
14 accordance with the Kansas administrative procedures act. If no such
15 protest is filed within the time allowed, the assessment shall become final
16 and subject to collection procedures provided by law.

17 (4) Interest shall accrue on the amount of the total penalty that has
18 been assessed and become final for each calendar year pursuant to this
19 section at the rate established pursuant to K.S.A. 79-3615, and
20 amendments thereto.

21 (5) Upon written request received within the time established for
22 protest pursuant to subsection (d)(3), the director, in the director's sole
23 discretion, may waive any portion or all of the penalty or interest
24 applicable under this section for good cause shown.

25 (e) Information received by the department pursuant to this act shall
26 be exempt from any disclosure required pursuant to law. Such information
27 shall be treated as confidential taxpayer information pursuant to K.S.A.
28 75-5133 *et seq.*, and amendments thereto, and all exceptions, penalties,
29 punishments, and remedies applicable to disclosure of confidential
30 taxpayer information pursuant to K.S.A. 75-5133 *et seq.*, and amendments
31 thereto, shall apply to disclosure of information received by the
32 department pursuant to this act.

33 (f) Nothing in this act shall relieve a person who is subject to the
34 Kansas retailers' sales tax act and the Kansas compensating tax act from
35 any responsibilities imposed thereunder, nor shall anything in this act
36 prevent the director from administering and enforcing the Kansas retailers'
37 sales tax act and the Kansas compensating tax act, with respect to any
38 person who is subject thereto. Any Kansas purchaser who voluntarily paid
39 any required compensating use tax and submits all required documentation
40 to the department shall not be subject to any penalty assessed pursuant to
41 the Kansas retailers' sales tax act and the Kansas compensating tax act.

42 (g) On or before March 1 of each year, the department shall mail to
43 each Kansas purchaser with one or more out-of-state purchases subject to

1 the Kansas compensating tax act and the Kansas retailers' sales tax act on
2 which the seller did not collect and remit such taxes a statement providing
3 a list containing the name of the seller, the total dollar amount of such
4 purchases by such purchaser and the amount of sales or compensating use
5 tax owed. The statement may contain notice that the seller did not collect
6 sales or compensating use tax on the Kansas purchaser's transactions.

7 (h) The secretary of revenue shall administer the provisions of this
8 act. The secretary shall promulgate rules and regulations necessary to carry
9 out the provisions of this act.

10 (i) The provisions of this act are declared to be severable and if any
11 word, phrase, sentence, clause or section of this act or the application
12 thereof to any person shall be held to be invalid, such invalidity shall not
13 affect the validity of the remaining portions of this act, which shall remain
14 in effect.

15 Sec. 2. K.S.A. 2011 Supp. 79-3620 is hereby amended to read as
16 follows: 79-3620. (a) All revenue collected or received by the director of
17 taxation from the taxes imposed by this act shall be remitted to the state
18 treasurer in accordance with the provisions of K.S.A. 75-4215, and
19 amendments thereto. Upon receipt of each such remittance, the state
20 treasurer shall deposit the entire amount in the state treasury, less amounts
21 withheld as provided in subsection (b) and amounts credited as provided in
22 subsection (c), (d) ~~and~~, (e) and (f), to the credit of the state general fund.

23 (b) A refund fund, designated as "sales tax refund fund" not to exceed
24 \$100,000 shall be set apart and maintained by the director from sales tax
25 collections and estimated tax collections and held by the state treasurer for
26 prompt payment of all sales tax refunds including refunds authorized
27 under the provisions of K.S.A. 79-3635, and amendments thereto. Such
28 fund shall be in such amount, within the limit set by this section, as the
29 director shall determine is necessary to meet current refunding
30 requirements under this act. In the event such fund as established by this
31 section is, at any time, insufficient to provide for the payment of refunds
32 due claimants thereof, the director shall certify the amount of additional
33 funds required to the director of accounts and reports who shall promptly
34 transfer the required amount from the state general fund to the sales tax
35 refund fund, and notify the state treasurer, who shall make proper entry in
36 the records.

37 (c) (1) The state treasurer shall credit $\frac{5}{98}$ of the revenue collected or
38 received from the tax imposed by K.S.A. 79-3603, and amendments
39 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),
40 exclusive of amounts credited pursuant to subsection (d), in the state
41 highway fund.

42 (2) The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or
43 received from the tax imposed by K.S.A. 79-3603, and amendments

1 thereto, at the rate of 5.3%, and deposited as provided in subsection (a),
2 exclusive of amounts credited pursuant to subsection (d), in the state
3 highway fund.

4 (3) On July 1, 2006, the state treasurer shall credit $^{19}/_{265}$ of the revenue
5 collected and received from the tax imposed by K.S.A. 79-3603, and
6 amendments thereto, at the rate of 5.3%, and deposited as provided by
7 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
8 the state highway fund.

9 (4) On July 1, 2007, the state treasurer shall credit $^{13}/_{106}$ of the revenue
10 collected and received from the tax imposed by K.S.A. 79-3603, and
11 amendments thereto, at the rate of 5.3%, and deposited as provided by
12 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
13 the state highway fund.

14 (5) On July 1, 2010, the state treasurer shall credit 11.427% of the
15 revenue collected and received from the tax imposed by K.S.A. 79-3603,
16 and amendments thereto, at the rate of 6.3%, and deposited as provided by
17 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
18 the state highway fund.

19 (6) On July 1, 2011, the state treasurer shall credit 11.26% of the
20 revenue collected and received from the tax imposed by K.S.A. 79-3603,
21 and amendments thereto, at the rate of 6.3%, and deposited as provided by
22 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
23 the state highway fund.

24 (7) On July 1, 2012, the state treasurer shall credit 11.233% of the
25 revenue collected and received from the tax imposed by K.S.A. 79-3603,
26 and amendments thereto, at the rate of 6.3%, and deposited as provided by
27 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
28 the state highway fund, as well as such revenue collected and received at
29 the rate of 6.3%, after June 30, 2013.

30 (8) On July 1, 2013, and thereafter, the state treasurer shall credit
31 18.421% of the revenue collected and received from the tax imposed by
32 K.S.A. 79-3603, and amendments thereto, at the rate of 5.7%, and
33 deposited as provided by subsection (a), exclusive of amounts credited
34 pursuant to subsection (d), in the state highway fund.

35 (d) The state treasurer shall credit all revenue collected or received
36 from the tax imposed by K.S.A. 79-3603, and amendments thereto, as
37 certified by the director, from taxpayers doing business within that portion
38 of a STAR bond project district occupied by a STAR bond project or
39 taxpayers doing business with such entity financed by a STAR bond
40 project as defined in K.S.A. 2011 Supp. 12-17,162, and amendments
41 thereto, that was determined by the secretary of commerce to be of
42 statewide as well as local importance or will create a major tourism area
43 for the state or the project was designated as a STAR bond project as

1 defined in K.S.A. 2011 Supp. 12-17,162, and amendments thereto, to the
2 city bond finance fund, which fund is hereby created. The provisions of
3 this subsection shall expire when the total of all amounts credited
4 hereunder and under subsection (d) of K.S.A. 79-3710, and amendments
5 thereto, is sufficient to retire the special obligation bonds issued for the
6 purpose of financing all or a portion of the costs of such STAR bond
7 project.

8 (e) All revenue certified by the director of taxation as having been
9 collected or received from the tax imposed by subsection (c) of K.S.A. 79-
10 3603, and amendments thereto, on the sale or furnishing of gas, water,
11 electricity and heat for use or consumption within the intermodal facility
12 district described in this subsection, shall be credited by the state treasurer
13 to the state highway fund. Such revenue may be transferred by the
14 secretary of transportation to the rail service improvement fund pursuant to
15 law. The provisions of this subsection shall take effect upon certification
16 by the secretary of transportation that a notice to proceed has been
17 received for the construction of the improvements within the intermodal
18 facility district, but not later than December 31, 2010, and shall expire
19 when the secretary of revenue determines that the total of all amounts
20 credited hereunder and pursuant to subsection (e) of K.S.A. 79-3710, and
21 amendments thereto, is equal to \$53,300,000, but not later than December
22 31, 2045. Thereafter, all revenues shall be collected and distributed in
23 accordance with applicable law. For all tax reporting periods during which
24 the provisions of this subsection are in effect, none of the exemptions
25 contained in K.S.A. 79-3601 *et seq.*, and amendments thereto, shall apply
26 to the sale or furnishing of any gas, water, electricity and heat for use or
27 consumption within the intermodal facility district. As used in this
28 subsection, "intermodal facility district" shall consist of an intermodal
29 transportation area as defined by subsection (oo) of K.S.A. 12-1770a, and
30 amendments thereto, located in Johnson county within the polygonal-
31 shaped area having Waverly Road as the eastern boundary, 191st Street as
32 the southern boundary, Four Corners Road as the western boundary, and
33 Highway 56 as the northern boundary, and the polygonal-shaped area
34 having Poplar Road as the eastern boundary, 183rd Street as the southern
35 boundary, Waverly Road as the western boundary, and the BNSF mainline
36 track as the northern boundary, that includes capital investment in an
37 amount exceeding \$150 million for the construction of an intermodal
38 facility to handle the transfer, storage and distribution of freight through
39 railway and trucking operations.

40 (f) *All additional revenue certified by the director as having been*
41 *collected or received as a result of the implementation of the provisions of*
42 *section 1, and amendments thereto, shall be credited by the state treasurer*
43 *as follows:*

1 (1) *Forty percent to the local ad valorem tax reduction fund as*
2 *provided in K.S.A. 79-2959, and amendments thereto;*

3 (2) *40% to the state school district finance fund as provided in K.S.A.*
4 *72-6438, and amendments thereto;*

5 (3) *10% to the Kansas scholarship fund as provided in section 4, and*
6 *amendments thereto;*

7 (4) *5% to the infrastructure maintenance fund as provided in K.S.A.*
8 *76-7,104, and amendments thereto; and*

9 (5) *5% to the Kansas technology investment fund as provided in*
10 *section 5, and amendments thereto.*

11 Sec. 3. K.S.A. 2011 Supp. 79-3710 is hereby amended to read as
12 follows: 79-3710. (a) All revenue collected or received by the director
13 under the provisions of this act shall be remitted to the state treasurer in
14 accordance with the provisions of K.S.A. 75-4215, and amendments
15 thereto. Upon receipt of each such remittance, the state treasurer shall
16 deposit the entire amount in the state treasury, less amounts set apart as
17 provided in subsection (b) and amounts credited as provided in subsection
18 (c), (d) ~~and~~, (e) and (f), to the credit of the state general fund.

19 (b) A revolving fund, designated as "compensating tax refund fund"
20 not to exceed \$10,000 shall be set apart and maintained by the director
21 from compensating tax collections and estimated tax collections and held
22 by the state treasurer for prompt payment of all compensating tax refunds.
23 Such fund shall be in such amount, within the limit set by this section, as
24 the director shall determine is necessary to meet current refunding
25 requirements under this act.

26 (c) (1) The state treasurer shall credit $\frac{5}{98}$ of the revenue collected or
27 received from the tax imposed by K.S.A. 79-3703, and amendments
28 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),
29 exclusive of amounts credited pursuant to subsection (d), in the state
30 highway fund.

31 (2) The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or
32 received from the tax imposed by K.S.A. 79-3703, and amendments
33 thereto, at the rate of 5.3%, and deposited as provided in subsection (a),
34 exclusive of amounts credited pursuant to subsection (d), in the state
35 highway fund.

36 (3) On July 1, 2006, the state treasurer shall credit $\frac{19}{265}$ of the revenue
37 collected or received from the tax imposed by K.S.A. 79-3703, and
38 amendments thereto, at the rate of 5.3%, and deposited as provided by
39 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
40 the state highway fund.

41 (4) On July 1, 2007, the state treasurer shall credit $\frac{13}{106}$ of the revenue
42 collected or received from the tax imposed by K.S.A. 79-3703, and
43 amendments thereto, at the rate of 5.3%, and deposited as provided by

1 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
2 the state highway fund.

3 (5) On July 1, 2010, the state treasurer shall credit 11.427% of the
4 revenue collected and received from the tax imposed by K.S.A. 79-3703,
5 and amendments thereto, at the rate of 6.3%, and deposited as provided by
6 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
7 the state highway fund.

8 (6) On July 1, 2011, the state treasurer shall credit 11.26% of the
9 revenue collected and received from the tax imposed by K.S.A. 79-3703,
10 and amendments thereto, at the rate of 6.3%, and deposited as provided by
11 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
12 the state highway fund.

13 (7) On July 1, 2012, the state treasurer shall credit 11.233% of the
14 revenue collected and received from the tax imposed by K.S.A. 79-3703,
15 and amendments thereto, at the rate of 6.3%, and deposited as provided by
16 subsection (a), exclusive of amounts credited pursuant to subsection (d), in
17 the state highway fund, as well as such revenue collected and received at
18 the rate of 6.3%, after June 30, 2013.

19 (8) On July 1, 2013, and thereafter, the state treasurer shall credit
20 18.421% of the revenue collected and received from the tax imposed by
21 K.S.A. 79-3703, and amendments thereto, at the rate of 5.7%, and
22 deposited as provided by subsection (a), exclusive of amounts credited
23 pursuant to subsection (d), in the state highway fund.

24 (d) The state treasurer shall credit all revenue collected or received
25 from the tax imposed by K.S.A. 79-3703, and amendments thereto, as
26 certified by the director, from taxpayers doing business within that portion
27 of a redevelopment district occupied by a redevelopment project that was
28 determined by the secretary of commerce to be of statewide as well as
29 local importance or will create a major tourism area for the state as defined
30 in K.S.A. 12-1770a, and amendments thereto, to the city bond finance
31 fund created by subsection (d) of K.S.A. 79-3620, and amendments
32 thereto. The provisions of this subsection shall expire when the total of all
33 amounts credited hereunder and under subsection (d) of K.S.A. 79-3620,
34 and amendments thereto, is sufficient to retire the special obligation bonds
35 issued for the purpose of financing all or a portion of the costs of such
36 redevelopment project.

37 This subsection shall not apply to a project designated as a special bond
38 project as defined in subsection (z) of K.S.A. 12-1770a, and amendments
39 thereto.

40 (e) All revenue certified by the director of taxation as having been
41 collected or received from the tax imposed by subsection (c) of K.S.A. 79-
42 3603, and amendments thereto, on the sale or furnishing of gas, water,
43 electricity and heat for use or consumption within the intermodal facility

1 district described in this subsection, shall be credited by the state treasurer
2 to the state highway fund. Such revenue may be transferred by the
3 secretary of transportation to the rail service improvement fund pursuant to
4 law. The provisions of this subsection shall take effect upon certification
5 by the secretary of transportation that a notice to proceed has been
6 received for the construction of the improvements within the intermodal
7 facility district, but not later than December 31, 2010, and shall expire
8 when the secretary of revenue determines that the total of all amounts
9 credited hereunder and pursuant to subsection (e) of K.S.A. 79-3620, and
10 amendments thereto, is equal to \$53,300,000, but not later than December
11 31, 2045. Thereafter, all revenues shall be collected and distributed in
12 accordance with applicable law. For all tax reporting periods during which
13 the provisions of this subsection are in effect, none of the exemptions
14 contained in K.S.A. 79-3601 *et seq.*, and amendments thereto, shall apply
15 to the sale or furnishing of any gas, water, electricity and heat for use or
16 consumption within the intermodal facility district. As used in this
17 subsection, "intermodal facility district" shall consist of an intermodal
18 transportation area as defined by subsection (oo) of K.S.A. 12-1770a, and
19 amendments thereto, located in Johnson county within the polygonal-
20 shaped area having Waverly Road as the eastern boundary, 191st Street as
21 the southern boundary, Four Corners Road as the western boundary, and
22 Highway 56 as the northern boundary, and the polygonal-shaped area
23 having Poplar Road as the eastern boundary, 183rd Street as the southern
24 boundary, Waverly Road as the western boundary, and the BNSF mainline
25 track as the northern boundary, that includes capital investment in an
26 amount exceeding \$150 million for the construction of an intermodal
27 facility to handle the transfer, storage and distribution of freight through
28 railway and trucking operations.

29 *(f) All additional revenue certified by the director as having been*
30 *collected or received as a result of the implementation of the provisions of*
31 *section 1, and amendments thereto, shall be credited by the state treasurer*
32 *as follows:*

33 *(1) Forty percent to the local ad valorem tax reduction fund as*
34 *provided in K.S.A. 79-2959, and amendments thereto;*

35 *(2) 40% to the state school district finance fund as provided in K.S.A.*
36 *72-6438, and amendments thereto;*

37 *(3) 10% to the Kansas scholarship fund as provided in section 4, and*
38 *amendments thereto;*

39 *(4) 5% to the infrastructure maintenance fund as provided in K.S.A.*
40 *76-7,104, and amendments thereto; and*

41 *(5) 5% to the Kansas technology investment fund as provided in*
42 *section 5, and amendments thereto.*

43 New Sec. 4. There is hereby established in the state treasury the

1 Kansas scholarship fund which shall be administered by the state board of
2 regents. All expenditures from the Kansas scholarship fund shall be for the
3 purpose of providing scholarships for graduates of Kansas high schools
4 who are attending a state educational institution as defined by K.S.A. 76-
5 711, and amendments thereto. All expenditures from the Kansas
6 scholarship fund shall be made in accordance with appropriation acts upon
7 warrants of the director of accounts and reports issued pursuant to
8 vouchers approved by the chief executive officer of the state board of
9 regents or the designee of the chief executive officer.

10 All moneys received for credit to the Kansas scholarship fund pursuant
11 to the provisions of K.S.A. 79-3620 and 79-3710, and amendments
12 thereto, shall be deposited in the state treasury in accordance with the
13 provisions of K.S.A. 75-4215, and amendments thereto, and shall be
14 credited to the Kansas scholarship fund.

15 New Sec. 5. There is hereby established in the state treasury the
16 Kansas technology investment fund which shall be administered by the
17 state board of regents. All expenditures from the Kansas technology
18 investment fund shall be for the purpose of technology investments at state
19 educational institutions as defined by K.S.A. 76-711, and amendments
20 thereto. All expenditures from the Kansas technology investment fund
21 shall be made in accordance with appropriation acts upon warrants of the
22 director of accounts and reports issued pursuant to vouchers approved by
23 the chief executive officer of the state board of regents or the designee of
24 the chief executive officer.

25 All moneys received for credit to the Kansas technology investment
26 fund pursuant to the provisions of K.S.A. 79-3620 and 79-3710, and
27 amendments thereto, shall be deposited in the state treasury in accordance
28 with the provisions of K.S.A. 75-4215, and amendments thereto, and shall
29 be credited to the Kansas technology investment fund.

30 Sec. 6. K.S.A. 2011 Supp. 79-3620 and 79-3710 are hereby repealed.

31 Sec. 7. This act shall take effect and be in force from and after its
32 publication in the statute book.

33