

STATE OF KANSAS

SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **HB 2084**, as amended by Senate Committee of the Whole on May 23, 2013, by amendment designated "fa_2013_hb2084_s_2394" by striking all in "Sec. 5" and inserting:

"Sec. 5. K.S.A. 2012 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, ~~and commencing July 1, 2013, at the rate of 5.7%~~. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state, except that effective January 1, 2014, the rate on sales of food and food ingredients, and sales of food through vending machines shall be 4.95%, but not including sales of prepared food, which sales shall be at the rate of 6.3%. The following items shall be taxed as sales of food and food ingredients and not as sales of prepared food if sold without eating utensils provided by the seller:

(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).

(2) Food sold in an unheated state by weight or volume as a single item.

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts,

danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

The sales of substances that are included within the definition of "food and food ingredients," including, but not limited to, "bottled water," "candy," "dietary supplements" and "soft drinks," shall be taxed as the sales of "prepared food" if sold as "prepared food";

(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2012 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2012 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (5) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for 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, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or

(3) connection or reconnection fees collected by a water supplier;

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

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

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

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

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund

fund of all taxes paid thereon;

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

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

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

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

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

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

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

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

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. Any amount of sales tax paid pursuant to the Kansas retailers sales tax act on the isolated or occasional sale of motor vehicles or trailers on and after July 1, 2004, which the base for computing the

tax was the value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments thereto, when such amount was higher than the amount of sales tax which would have been paid under the law as it existed on June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure prescribed by this section. Such refund shall be in an amount equal to the difference between the amount of sales tax paid by the taxpayer and the amount of sales tax which would have been paid by the taxpayer under the law as it existed on June 30, 2004. Each claim for a sales tax refund shall be verified and submitted not later than six months from the effective date of this act 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 tax paid as provided by this act. All such 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 of taxation or the director's designee. No refund for an amount less than \$10 shall be paid pursuant to this act. In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

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

For the purposes of this subsection:

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

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility;

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(5) "utility structure" shall mean transmission and distribution lines owned by an independent transmission company or cooperative, the Kansas electric transmission authority or natural gas or electric public utility; and

(6) "windstorm" shall mean straight line winds of at least 80 miles per hour as determined by a recognized meteorological reporting agency or organization;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) on and after January 1, 2005, the gross receipts received from the sale of prewritten computer software and the sale of the services of modifying, altering, updating or maintaining prewritten computer software, whether the prewritten computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;

(t) the gross receipts received for telephone answering services;

(u) the gross receipts received from the sale of prepaid calling service and prepaid wireless calling service as defined in K.S.A. 2012 Supp. 79-3673, and amendments thereto; and

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

Also by striking "Sec. 7" and inserting:

"Sec. 7. K.S.A. 2012 Supp. 79-3703 is hereby amended to read as follows: 79-3703. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using, storing, or consuming within this state any article of tangible personal property. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by the rate of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, ~~and commencing July 1, 2013, at the rate of 5.7%~~ except that effective January 1, 2014, the rate on the consideration paid by the taxpayer for food and food ingredients, and food purchased through vending machines shall be 4.95%, but not including the consideration paid by the taxpayer for prepared food, which rate shall be 6.3%.

(a) The following items shall be taxed as the using, consuming or storing within this state of food and food ingredients and not as the using, consuming or storing within this state of prepared food if sold without eating utensils provided by the seller:

(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).

(2) Food sold in an unheated state by weight or volume as a single item.

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

The privilege of using, storing or consuming within this state substances that are included within the definition of "food and food ingredients," including, but not limited to, "bottled water," "candy," "dietary supplements" and "soft drinks," shall be taxed as the privilege of using, storing or consuming within this state "prepared food" if sold as "prepared food."

(b) Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax of 2% until the

earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project. All property purchased or leased within or without this state and subsequently used, stored or consumed in this state shall be subject to the compensating tax if the same property or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state."

Senator _____