

HOUSE BILL No. 2400

By Committee on Taxation

3-17

1 AN ACT concerning sales taxation; relating to the collection of sales taxes
2 from certain remote sellers; amending K.S.A. 2016 Supp. 79-3602 and
3 repealing the existing section.
4

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

6 New Section 1. (a) Notwithstanding any other provision of law, any
7 seller selling tangible personal property, products transferred electronically
8 or rendering or furnishing any services for delivery into Kansas that are
9 subject to taxation under the Kansas retailers' sales tax act who does not
10 have a physical presence in this state shall remit sales tax and follow all
11 applicable procedures and requirements of the Kansas retailers' sales tax
12 act as if the seller had a physical presence in this state once the seller
13 meets either of the following requirements for the current calendar year or
14 the immediately preceding calendar year:

15 (1) The seller's gross revenue from the sale of tangible personal
16 property, products transferred electronically or services delivered into this
17 state exceeds \$100,000; or

18 (2) the seller sold tangible personal property, products transferred
19 electronically or services delivered into this state in 200 or more separate
20 transactions.

21 (b) A seller complying with the provisions of this section, voluntarily
22 or otherwise, may only seek a recovery of taxes, penalties or interest by
23 following the recovery procedures pursuant to K.S.A. 2016 Supp. 79-
24 3693, and amendments thereto. However, no claim may be granted on the
25 basis that the taxpayer lacked a physical presence in the state and complied
26 with this section voluntarily if the section is subject to an injunction.

27 (c) No seller who remits sales tax voluntarily or otherwise under this
28 section is liable to a purchaser who claims that the sales tax has been over-
29 collected because a provision of this section is later deemed unlawful.

30 (d) The provisions of this section shall be part of and supplemental to
31 the Kansas retailers' sales tax act.

32 Sec. 2. K.S.A. 2016 Supp. 79-3602 is hereby amended to read as
33 follows: 79-3602. Except as otherwise provided, as used in the Kansas
34 retailers' sales tax act:

35 (a) "Agent" means a person appointed by a seller to represent the
36 seller before the member states.

1 (b) "Agreement" means the multistate agreement entitled the
2 streamlined sales and use tax agreement approved by the streamlined sales
3 tax implementing states at Chicago, Illinois on November 12, 2002.

4 (c) "Alcoholic beverages" means beverages that are suitable for
5 human consumption and contain 0.05% or more of alcohol by volume.

6 (d) "Certified automated system (CAS)" means software certified
7 under the agreement to calculate the tax imposed by each jurisdiction on a
8 transaction, determine the amount of tax to remit to the appropriate state
9 and maintain a record of the transaction.

10 (e) "Certified service provider (CSP)" means an agent certified under
11 the agreement to perform all the seller's sales and use tax functions, other
12 than the seller's obligation to remit tax on its own purchases.

13 (f) "Computer" means an electronic device that accepts information
14 in digital or similar form and manipulates it for a result based on a
15 sequence of instructions.

16 (g) "Computer software" means a set of coded instructions designed
17 to cause a computer or automatic data processing equipment to perform a
18 task.

19 (h) "Delivered electronically" means delivered to the purchaser by
20 means other than tangible storage media.

21 (i) "Delivery charges" means charges by the seller of personal
22 property or services for preparation and delivery to a location designated
23 by the purchaser of personal property or services including, but not limited
24 to, transportation, shipping, postage, handling, crating and packing.
25 Delivery charges shall not include charges for delivery of direct mail if the
26 charges are separately stated on an invoice or similar billing document
27 given to the purchaser.

28 (j) "Direct mail" means printed material delivered or distributed by
29 United States mail or other delivery services to a mass audience or to
30 addressees on a mailing list provided by the purchaser or at the direction of
31 the purchaser when the cost of the items are not billed directly to the
32 recipients. Direct mail includes tangible personal property supplied
33 directly or indirectly by the purchaser to the direct mail seller for inclusion
34 in the package containing the printed material. Direct mail does not
35 include multiple items of printed material delivered to a single address.

36 (k) "Director" means the state director of taxation.

37 (l) "Educational institution" means any nonprofit school, college and
38 university that offers education at a level above the 12th grade, and
39 conducts regular classes and courses of study required for accreditation by,
40 or membership in, the North Central Association of Colleges and Schools,
41 the state board of education, or that otherwise qualify as an "educational
42 institution," as defined by K.S.A. 74-50,103, and amendments thereto.
43 Such phrase shall include: (1) A group of educational institutions that

1 operates exclusively for an educational purpose; (2) nonprofit endowment
2 associations and foundations organized and operated exclusively to
3 receive, hold, invest and administer moneys and property as a permanent
4 fund for the support and sole benefit of an educational institution; (3)
5 nonprofit trusts, foundations and other entities organized and operated
6 principally to hold and own receipts from intercollegiate sporting events
7 and to disburse such receipts, as well as grants and gifts, in the interest of
8 collegiate and intercollegiate athletic programs for the support and sole
9 benefit of an educational institution; and (4) nonprofit trusts, foundations
10 and other entities organized and operated for the primary purpose of
11 encouraging, fostering and conducting scholarly investigations and
12 industrial and other types of research for the support and sole benefit of an
13 educational institution.

14 (m) "Electronic" means relating to technology having electrical,
15 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

16 (n) "Food and food ingredients" means substances, whether in liquid,
17 concentrated, solid, frozen, dried or dehydrated form, that are sold for
18 ingestion or chewing by humans and are consumed for their taste or
19 nutritional value. "Food and food ingredients" does not include alcoholic
20 beverages or tobacco.

21 (o) "Gross receipts" means the total selling price or the amount
22 received as defined in this act, in money, credits, property or other
23 consideration valued in money from sales at retail within this state; and
24 embraced within the provisions of this act. The taxpayer, may take credit
25 in the report of gross receipts for: (1) An amount equal to the selling price
26 of property returned by the purchaser when the full sale price thereof,
27 including the tax collected, is refunded in cash or by credit; and (2) an
28 amount equal to the allowance given for the trade-in of property.

29 (p) "Ingredient or component part" means tangible personal property
30 which is necessary or essential to, and which is actually used in and
31 becomes an integral and material part of tangible personal property or
32 services produced, manufactured or compounded for sale by the producer,
33 manufacturer or compounder in its regular course of business. The
34 following items of tangible personal property are hereby declared to be
35 ingredients or component parts, but the listing of such property shall not be
36 deemed to be exclusive nor shall such listing be construed to be a
37 restriction upon, or an indication of, the type or types of property to be
38 included within the definition of "ingredient or component part" as herein
39 set forth:

40 (1) Containers, labels and shipping cases used in the distribution of
41 property produced, manufactured or compounded for sale which are not to
42 be returned to the producer, manufacturer or compounder for reuse.

43 (2) Containers, labels, shipping cases, paper bags, drinking straws,

1 paper plates, paper cups, twine and wrapping paper used in the distribution
2 and sale of property taxable under the provisions of this act by wholesalers
3 and retailers and which is not to be returned to such wholesaler or retailer
4 for reuse.

5 (3) Seeds and seedlings for the production of plants and plant
6 products produced for resale.

7 (4) Paper and ink used in the publication of newspapers.

8 (5) Fertilizer used in the production of plants and plant products
9 produced for resale.

10 (6) Feed for animals, fowl and aquatic plants and animals, the
11 primary purpose of which is use in agriculture or aquaculture, as defined in
12 K.S.A. 47-1901, and amendments thereto, the production of food for
13 human consumption, the production of animal, dairy, poultry or aquatic
14 plant and animal products, fiber, fur, or the production of offspring for use
15 for any such purpose or purposes.

16 (q) "Isolated or occasional sale" means the nonrecurring sale of
17 tangible personal property, or services taxable hereunder by a person not
18 engaged at the time of such sale in the business of selling such property or
19 services. Any religious organization which makes a nonrecurring sale of
20 tangible personal property acquired for the purpose of resale shall be
21 deemed to be not engaged at the time of such sale in the business of selling
22 such property. Such term shall include: (1) Any sale by a bank, savings and
23 loan institution, credit union or any finance company licensed under the
24 provisions of the Kansas uniform consumer credit code of tangible
25 personal property which has been repossessed by any such entity; and (2)
26 any sale of tangible personal property made by an auctioneer or agent on
27 behalf of not more than two principals or households if such sale is
28 nonrecurring and any such principal or household is not engaged at the
29 time of such sale in the business of selling tangible personal property.

30 (r) "Lease or rental" means any transfer of possession or control of
31 tangible personal property for a fixed or indeterminate term for
32 consideration. A lease or rental may include future options to purchase or
33 extend.

34 (1) Lease or rental does not include: (A) A transfer of possession or
35 control of property under a security agreement or deferred payment plan
36 that requires the transfer of title upon completion of the required
37 payments;

38 (B) a transfer or possession or control of property under an agreement
39 that requires the transfer of title upon completion of required payments and
40 payment of an option price does not exceed the greater of \$100 or 1% of
41 the total required payments; or

42 (C) providing tangible personal property along with an operator for a
43 fixed or indeterminate period of time. A condition of this exclusion is that

1 the operator is necessary for the equipment to perform as designed. For the
2 purpose of this subsection, an operator must do more than maintain,
3 inspect or set-up the tangible personal property.

4 (2) Lease or rental does include agreements covering motor vehicles
5 and trailers where the amount of consideration may be increased or
6 decreased by reference to the amount realized upon sale or disposition of
7 the property as defined in 26 U.S.C. § 7701(h)(1).

8 (3) This definition shall be used for sales and use tax purposes
9 regardless if a transaction is characterized as a lease or rental under
10 generally accepted accounting principles, the internal revenue code, the
11 uniform commercial code, K.S.A. 84-1-101 et seq., and amendments
12 thereto, or other provisions of federal, state or local law.

13 (4) This definition will be applied only prospectively from the
14 effective date of this act and will have no retroactive impact on existing
15 leases or rentals.

16 (s) "Load and leave" means delivery to the purchaser by use of a
17 tangible storage media where the tangible storage media is not physically
18 transferred to the purchaser.

19 (t) "Member state" means a state that has entered in the agreement,
20 pursuant to provisions of article VIII of the agreement.

21 (u) "Model 1 seller" means a seller that has selected a CSP as its
22 agent to perform all the seller's sales and use tax functions, other than the
23 seller's obligation to remit tax on its own purchases.

24 (v) "Model 2 seller" means a seller that has selected a CAS to
25 perform part of its sales and use tax functions, but retains responsibility for
26 remitting the tax.

27 (w) "Model 3 seller" means a seller that has sales in at least five
28 member states, has total annual sales revenue of at least \$500,000,000, has
29 a proprietary system that calculates the amount of tax due each jurisdiction
30 and has entered into a performance agreement with the member states that
31 establishes a tax performance standard for the seller. As used in this
32 subsection a seller includes an affiliated group of sellers using the same
33 proprietary system.

34 (x) "Municipal corporation" means any city incorporated under the
35 laws of Kansas.

36 (y) "Nonprofit blood bank" means any nonprofit place, organization,
37 institution or establishment that is operated wholly or in part for the
38 purpose of obtaining, storing, processing, preparing for transfusing,
39 furnishing, donating or distributing human blood or parts or fractions of
40 single blood units or products derived from single blood units, whether or
41 not any remuneration is paid therefor, or whether such procedures are done
42 for direct therapeutic use or for storage for future use of such products.

43 (z) "Persons" means any individual, firm, copartnership, joint

1 adventure, association, corporation, estate or trust, receiver or trustee, or
2 any group or combination acting as a unit, and the plural as well as the
3 singular number; and shall specifically mean any city or other political
4 subdivision of the state of Kansas engaging in a business or providing a
5 service specifically taxable under the provisions of this act.

6 (aa) "Political subdivision" means any municipality, agency or
7 subdivision of the state which is, or shall hereafter be, authorized to levy
8 taxes upon tangible property within the state or which certifies a levy to a
9 municipality, agency or subdivision of the state which is, or shall hereafter
10 be, authorized to levy taxes upon tangible property within the state. Such
11 term also shall include any public building commission, housing, airport,
12 port, metropolitan transit or similar authority established pursuant to law
13 and the horsethief reservoir benefit district established pursuant to K.S.A.
14 82a-2201, and amendments thereto.

15 (bb) "Prescription" means an order, formula or recipe issued in any
16 form of oral, written, electronic or other means of transmission by a duly
17 licensed practitioner authorized by the laws of this state.

18 (cc) "Prewritten computer software" means computer software,
19 including prewritten upgrades, which is not designed and developed by the
20 author or other creator to the specifications of a specific purchaser. The
21 combining of two or more prewritten computer software programs or
22 prewritten portions thereof does not cause the combination to be other than
23 prewritten computer software. Prewritten computer software includes
24 software designed and developed by the author or other creator to the
25 specifications of a specific purchaser when it is sold to a person other than
26 the purchaser. Where a person modifies or enhances computer software of
27 which the person is not the author or creator, the person shall be deemed to
28 be the author or creator only of such person's modifications or
29 enhancements. Prewritten computer software or a prewritten portion
30 thereof that is modified or enhanced to any degree, where such
31 modification or enhancement is designed and developed to the
32 specifications of a specific purchaser, remains prewritten computer
33 software, except that where there is a reasonable, separately stated charge
34 or an invoice or other statement of the price given to the purchaser for
35 such modification or enhancement, such modification or enhancement
36 shall not constitute prewritten computer software.

37 (dd) "Property which is consumed" means tangible personal property
38 which is essential or necessary to and which is used in the actual process
39 of and consumed, depleted or dissipated within one year in: (1) The
40 production, manufacture, processing, mining, drilling, refining or
41 compounding of tangible personal property; (2) the providing of services;
42 (3) the irrigation of crops, for sale in the regular course of business; or (4)
43 the storage or processing of grain by a public grain warehouse or other

1 grain storage facility, and which is not reusable for such purpose. The
2 following is a listing of tangible personal property, included by way of
3 illustration but not of limitation, which qualifies as property which is
4 consumed:

5 (A) Insecticides, herbicides, germicides, pesticides, fungicides,
6 fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and
7 chemicals for use in commercial or agricultural production, processing or
8 storage of fruit, vegetables, feeds, seeds, grains, animals or animal
9 products whether fed, injected, applied, combined with or otherwise used;

10 (B) electricity, gas and water; and

11 (C) petroleum products, lubricants, chemicals, solvents, reagents and
12 catalysts.

13 (ee) "Purchase price" applies to the measure subject to use tax and
14 has the same meaning as sales price.

15 (ff) "Purchaser" means a person to whom a sale of personal property
16 is made or to whom a service is furnished.

17 (gg) "Quasi-municipal corporation" means any county, township,
18 school district, drainage district or any other governmental subdivision in
19 the state of Kansas having authority to receive or hold moneys or funds.

20 (hh) "Registered under this agreement" means registration by a seller
21 with the member states under the central registration system provided in
22 article IV of the agreement.

23 (ii) "Retailer" means a seller regularly engaged in the business of
24 selling, leasing or renting tangible personal property at retail or furnishing
25 electrical energy, gas, water, services or entertainment, and selling only to
26 the user or consumer and not for resale.

27 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for
28 any purpose other than for resale, sublease or subrent.

29 (kk) "Sale" or "sales" means the exchange of tangible personal
30 property, as well as the sale thereof for money, and every transaction,
31 conditional or otherwise, for a consideration, constituting a sale, including
32 the sale or furnishing of electrical energy, gas, water, services or
33 entertainment taxable under the terms of this act and including, except as
34 provided in the following provision, the sale of the use of tangible personal
35 property by way of a lease, license to use or the rental thereof regardless of
36 the method by which the title, possession or right to use the tangible
37 personal property is transferred. The term "sale" or "sales" shall not mean
38 the sale of the use of any tangible personal property used as a dwelling by
39 way of a lease or rental thereof for a term of more than 28 consecutive
40 days.

41 (ll) (1) "Sales or selling price" applies to the measure subject to sales
42 tax and means the total amount of consideration, including cash, credit,
43 property and services, for which personal property or services are sold,

- 1 leased or rented, valued in money, whether received in money or
2 otherwise, without any deduction for the following:
- 3 (A) The seller's cost of the property sold;
 - 4 (B) the cost of materials used, labor or service cost, interest, losses,
5 all costs of transportation to the seller, all taxes imposed on the seller and
6 any other expense of the seller;
 - 7 (C) charges by the seller for any services necessary to complete the
8 sale, other than delivery and installation charges;
 - 9 (D) delivery charges; and
 - 10 (E) installation charges.
- 11 (2) "Sales or selling price" includes consideration received by the
12 seller from third parties if:
- 13 (A) The seller actually receives consideration from a party other than
14 the purchaser and the consideration is directly related to a price reduction
15 or discount on the sale;
 - 16 (B) the seller has an obligation to pass the price reduction or discount
17 through to the purchaser;
 - 18 (C) the amount of the consideration attributable to the sale is fixed
19 and determinable by the seller at the time of the sale of the item to the
20 purchaser; and
 - 21 (D) one of the following criteria is met:
 - 22 (i) The purchaser presents a coupon, certificate or other
23 documentation to the seller to claim a price reduction or discount where
24 the coupon, certificate or documentation is authorized, distributed or
25 granted by a third party with the understanding that the third party will
26 reimburse any seller to whom the coupon, certificate or documentation is
27 presented;
 - 28 (ii) the purchaser identifies to the seller that the purchaser is a
29 member of a group or organization entitled to a price reduction or
30 discount. A preferred customer card that is available to any patron does not
31 constitute membership in such a group; or
 - 32 (iii) the price reduction or discount is identified as a third party price
33 reduction or discount on the invoice received by the purchaser or on a
34 coupon, certificate or other documentation presented by the purchaser.
- 35 (3) "Sales or selling price" shall not include:
- 36 (A) Discounts, including cash, term or coupons that are not
37 reimbursed by a third party that are allowed by a seller and taken by a
38 purchaser on a sale;
 - 39 (B) interest, financing and carrying charges from credit extended on
40 the sale of personal property or services, if the amount is separately stated
41 on the invoice, bill of sale or similar document given to the purchaser;
 - 42 (C) any taxes legally imposed directly on the consumer that are
43 separately stated on the invoice, bill of sale or similar document given to

1 the purchaser;

2 (D) the amount equal to the allowance given for the trade-in of
3 property, if separately stated on the invoice, billing or similar document
4 given to the purchaser; and

5 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash
6 rebates granted by a manufacturer to a purchaser or lessee of a new motor
7 vehicle if paid directly to the retailer as a result of the original sale.

8 (mm) "Seller" means a person making sales, leases or rentals of
9 personal property or services, *including sales described in section 1, and*
10 *amendments thereto.*

11 (nn) "Service" means those services described in and taxed under the
12 provisions of K.S.A. 79-3603, and amendments thereto.

13 (oo) "Sourcing rules" means the rules set forth in K.S.A. 2016 Supp.
14 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments
15 thereto, which shall apply to identify and determine the state and local
16 taxing jurisdiction sales or use taxes to pay, or collect and remit on a
17 particular retail sale.

18 (pp) "Tangible personal property" means personal property that can
19 be seen, weighed, measured, felt or touched, or that is in any other manner
20 perceptible to the senses. Tangible personal property includes electricity,
21 water, gas, steam and prewritten computer software.

22 (qq) "Taxpayer" means any person obligated to account to the
23 director for taxes collected under the terms of this act.

24 (rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or
25 any other item that contains tobacco.

26 (ss) "Entity-based exemption" means an exemption based on who
27 purchases the product or who sells the product. An exemption that is
28 available to all individuals shall not be considered an entity-based
29 exemption.

30 (tt) "Over-the-counter" drug means a drug that contains a label that
31 identifies the product as a drug as required by 21 C.F.R. § 201.66. The
32 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
33 statement of the active ingredients with a list of those ingredients
34 contained in the compound, substance or preparation. Over-the-counter
35 drugs do not include grooming and hygiene products such as soaps,
36 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan
37 lotions and screens.

38 (uu) "Ancillary services" means services that are associated with or
39 incidental to the provision of telecommunications services, including, but
40 not limited to, detailed telecommunications billing, directory assistance,
41 vertical service and voice mail services.

42 (vv) "Conference bridging service" means an ancillary service that
43 links two or more participants of an audio or video conference call and

1 may include the provision of a telephone number. Conference bridging
2 service does not include the telecommunications services used to reach the
3 conference bridge.

4 (ww) "Detailed telecommunications billing service" means an
5 ancillary service of separately stating information pertaining to individual
6 calls on a customer's billing statement.

7 (xx) "Directory assistance" means an ancillary service of providing
8 telephone number information or address information, or both.

9 (yy) "Vertical service" means an ancillary service that is offered in
10 connection with one or more telecommunications services, which offers
11 advanced calling features that allow customers to identify callers and to
12 manage multiple calls and call connections, including conference bridging
13 services.

14 (zz) "Voice mail service" means an ancillary service that enables the
15 customer to store, send or receive recorded messages. Voice mail service
16 does not include any vertical services that the customer may be required to
17 have in order to utilize the voice mail service.

18 (aaa) "Telecommunications service" means the electronic
19 transmission, conveyance or routing of voice, data, audio, video or any
20 other information or signals to a point, or between or among points. The
21 term telecommunications service includes such transmission, conveyance
22 or routing in which computer processing applications are used to act on the
23 form, code or protocol of the content for purposes of transmissions,
24 conveyance or routing without regard to whether such service is referred to
25 as voice over internet protocol services or is classified by the federal
26 communications commission as enhanced or value added.
27 Telecommunications service does not include:

28 (1) Data processing and information services that allow data to be
29 generated, acquired, stored, processed or retrieved and delivered by an
30 electronic transmission to a purchaser where such purchaser's primary
31 purpose for the underlying transaction is the processed data or
32 information;

33 (2) installation or maintenance of wiring or equipment on a
34 customer's premises;

35 (3) tangible personal property;

36 (4) advertising, including, but not limited to, directory advertising;

37 (5) billing and collection services provided to third parties;

38 (6) internet access service;

39 (7) radio and television audio and video programming services,
40 regardless of the medium, including the furnishing of transmission,
41 conveyance and routing of such services by the programming service
42 provider. Radio and television audio and video programming services shall
43 include, but not be limited to, cable service as defined in 47 U.S.C. §

1 522(6) and audio and video programming services delivered by
 2 commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

3 (8) ancillary services; or

4 (9) digital products delivered electronically, including, but not limited
 5 to, software, music, video, reading materials or ring tones.

6 (bbb) "800 service" means a telecommunications service that allows a
 7 caller to dial a toll-free number without incurring a charge for the call. The
 8 service is typically marketed under the name 800, 855, 866, 877 and 888
 9 toll-free calling, and any subsequent numbers designated by the federal
 10 communications commission.

11 (ccc) "900 service" means an inbound toll telecommunications
 12 service purchased by a subscriber that allows the subscriber's customers to
 13 call in to the subscriber's prerecorded announcement or live service. 900
 14 service does not include the charge for collection services provided by the
 15 seller of the telecommunications services to the subscriber, or service or
 16 product sold by the subscriber to the subscriber's customer. The service is
 17 typically marketed under the name 900 service, and any subsequent
 18 numbers designated by the federal communications commission.

19 (ddd) "Value-added non-voice data service" means a service that
 20 otherwise meets the definition of telecommunications services in which
 21 computer processing applications are used to act on the form, content,
 22 code or protocol of the information or data primarily for a purpose other
 23 than transmission, conveyance or routing.

24 (eee) "International" means a telecommunications service that
 25 originates or terminates in the United States and terminates or originates
 26 outside the United States, respectively. United States includes the District
 27 of Columbia or a U.S. territory or possession.

28 (fff) "Interstate" means a telecommunications service that originates
 29 in one United States state, or a United States territory or possession, and
 30 terminates in a different United States state or a United States territory or
 31 possession.

32 (ggg) "Intrastate" means a telecommunications service that originates
 33 in one United States state or a United States territory or possession, and
 34 terminates in the same United States state or a United States territory or
 35 possession.

36 Sec. 3. K.S.A. 2016 Supp. 79-3602 is hereby repealed.

37 Sec. 4. This act shall take effect and be in force from and after its
 38 publication in the statute book.