

HOUSE BILL No. 2491

By Committee on Taxation

1-17

1 AN ACT concerning sales tax; relating to transactions subject to tax,
2 installation of certain appliances and electronic products; amending
3 K.S.A. 2017 Supp. 79-3603 and 79-3609 and repealing the existing
4 sections.

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

7 Section 1. K.S.A. 2017 Supp. 79-3603 is hereby amended to read as
8 follows: 79-3603. For the privilege of engaging in the business of selling
9 tangible personal property at retail in this state or rendering or furnishing
10 any of the services taxable under this act, there is hereby levied and there
11 shall be collected and paid a tax at the rate of 6.15%, and commencing
12 July 1, 2015, at the rate of 6.5%. Within a redevelopment district
13 established pursuant to K.S.A. 74-8921, and amendments thereto, there is
14 hereby levied and there shall be collected and paid an additional tax at the
15 rate of 2% until the earlier of the date the bonds issued to finance or
16 refinance the redevelopment project have been paid in full or the final
17 scheduled maturity of the first series of bonds issued to finance any part of
18 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. 2017 Supp. 79-3673, and amendments
24 thereto, except that telecommunications service does not include: (1) Any
25 interstate or international 800 or 900 service; (2) any interstate or
26 international private communications service as defined in K.S.A. 2017
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) any
31 service or transaction defined in this section among entities classified as
32 members of an affiliated group as provided by section 1504 of the federal
33 internal revenue code of 1986, as in effect on January 1, 2001;

34 (c) the gross receipts from the sale or furnishing of gas, water,
35 electricity and heat, which sale is not otherwise exempt from taxation
36 under the provisions of this act, and whether furnished by municipally or

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

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

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

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

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

32 (h) the gross receipts from the service of renting or leasing of tangible
33 personal property except such tax shall not apply to the renting or leasing
34 of machinery, equipment or other personal property owned by a city and
35 purchased from the proceeds of industrial revenue bonds issued prior to
36 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
37 12-1749, and amendments thereto, and any city or lessee renting or leasing
38 such machinery, equipment or other personal property purchased with the
39 proceeds of such bonds who shall have paid a tax under the provisions of
40 this section upon sales made prior to July 1, 1973, shall be entitled to a
41 refund from the sales tax refund fund of all taxes paid thereon;

42 (i) the gross receipts from the rendering of dry cleaning, pressing,
43 dyeing and laundry services except laundry services rendered through a

1 coin-operated device whether automatic or manually operated;

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

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

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

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

18 (m) the gross receipts received from fees and charges by public and
19 private clubs, drinking establishments, organizations and businesses for
20 participation in sports, games and other recreational activities, but such tax
21 shall not be levied and collected upon the gross receipts received from: (1)
22 Fees and charges by any political subdivision, by any organization exempt
23 from property taxation pursuant to K.S.A. 79-201 *Ninth*, and amendments
24 thereto, or by any youth recreation organization exclusively providing
25 services to persons 18 years of age or younger which is exempt from
26 federal income taxation pursuant to section 501(c)(3) of the federal
27 internal revenue code of 1986, for participation in sports, games and other
28 recreational activities; and (2) entry fees and charges for participation in a
29 special event or tournament sanctioned by a national sporting association
30 to which spectators are charged an admission which is taxable pursuant to
31 subsection (e);

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

42 (o) the gross receipts received from the isolated or occasional sale of
43 motor vehicles or trailers but not including: (1) The transfer of motor

1 vehicles or trailers by a person to a corporation or limited liability
2 company solely in exchange for stock securities or membership interest in
3 such corporation or limited liability company; (2) the transfer of motor
4 vehicles or trailers by one corporation or limited liability company to
5 another when all of the assets of such corporation or limited liability
6 company are transferred to such other corporation or limited liability
7 company; or (3) the sale of motor vehicles or trailers which are subject to
8 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
9 amendments thereto, by an immediate family member to another
10 immediate family member. For the purposes of paragraph (3), immediate
11 family member means lineal ascendants or descendants, and their spouses.
12 Any amount of sales tax paid pursuant to the Kansas retailers sales tax act
13 on the isolated or occasional sale of motor vehicles or trailers on and after
14 July 1, 2004, which the base for computing the tax was the value pursuant
15 to K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when
16 such amount was higher than the amount of sales tax which would have
17 been paid under the law as it existed on June 30, 2004, shall be refunded to
18 the taxpayer pursuant to the procedure prescribed by this section. Such
19 refund shall be in an amount equal to the difference between the amount of
20 sales tax paid by the taxpayer and the amount of sales tax which would
21 have been paid by the taxpayer under the law as it existed on June 30,
22 2004. Each claim for a sales tax refund shall be verified and submitted not
23 later than six months from the effective date of this act to the director of
24 taxation upon forms furnished by the director and shall be accompanied by
25 any additional documentation required by the director. The director shall
26 review each claim and shall refund that amount of tax paid as provided by
27 this act. All such refunds shall be paid from the sales tax refund fund, upon
28 warrants of the director of accounts and reports pursuant to vouchers
29 approved by the director of taxation or the director's designee. No refund
30 for an amount less than \$10 shall be paid pursuant to this act. In
31 determining the base for computing the tax on such isolated or occasional
32 sale, the fair market value of any motor vehicle or trailer traded in by the
33 purchaser to the seller may be deducted from the selling price;

34 (p) the gross receipts received for the service of installing or applying
35 tangible personal property which when installed or applied is not being
36 held for sale in the regular course of business, and whether or not such
37 tangible personal property when installed or applied remains tangible
38 personal property or becomes a part of real estate, except that no tax shall
39 be imposed upon the service of installing or applying tangible personal
40 property, *not including installation of an appliance or electronic product*,
41 in connection with the original construction of a building or facility, the
42 original construction, reconstruction, restoration, remodeling, renovation,
43 repair or replacement of a residence or the construction, reconstruction,

1 restoration, replacement or repair of a bridge or highway.

2 For the purposes of this subsection:

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

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

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

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

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

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

32 (7) *"appliance" shall mean a refrigerator, freezer, range, stovetop,*
33 *range hood, oven, microwave oven, washer, dryer, dishwasher, garbage*
34 *disposal, trash compactor or window air conditioner. "Appliance" shall*
35 *also include small appliances such as coffee makers and other similar*
36 *products that are normally used or sold for personal, family or household*
37 *use, whether free-standing or built-in. "Appliance" does not include a*
38 *central vacuum system, HVAC system, soft-water system, hot water heater,*
39 *attic fan or hard-wired lighting fixture;*

40 (8) *"electronic product" includes, but is not limited to, any television,*
41 *computer, radio, receiver, amplifier, pre-amplifier, audio or video recorder*
42 *or playback equipment, video camera, video game, video monitor; satellite*
43 *receiver or satellite dish. "Electronic product" shall also include computer*

1 accessories, including printers and video screens, electronic control
2 systems and any other kind of similar product that is normally sold for
3 personal, family or household use, whether free-standing or built-in; and

4 (9) "installation of an appliance or electronic product" shall mean
5 placing an appliance or electronic product in working order by
6 assembling it, sliding it into an existing opening, locating and fixing it in
7 place, connecting it to existing water or gas services, plugging or wiring it
8 into existing electrical services, connecting it to existing discharge pipes
9 or vents, or programming its controls. Charges for such installation
10 services are considered to be part of the selling price of such property
11 pursuant to K.S.A. 79-3602 (ll), and amendments thereto, and are taxed
12 whenever the sale of such property is taxed.

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

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

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

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

31 (u) the gross receipts received from the sale of prepaid calling service
32 and prepaid wireless calling service as defined in K.S.A. 2017 Supp. 79-
33 3673, and amendments thereto;

34 (v) all sales of bingo cards, bingo faces and instant bingo tickets by
35 licensees under K.S.A. 2017 Supp. 75-5171 et seq., and amendments
36 thereto, shall be exempt from taxes imposed pursuant to this section; and

37 (w) all sales of charitable raffle tickets in accordance with K.S.A.
38 2017 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
39 from taxes imposed pursuant to this section.

40 Sec. 2. K.S.A. 2017 Supp. 79-3609 is hereby amended to read as
41 follows: 79-3609. (a) Every person engaged in the business of selling
42 tangible personal property at retail or furnishing services taxable in this
43 state, shall keep records and books of all such sales, together with

1 invoices, bills of lading, sales records, copies of bills of sale and other
2 pertinent papers and documents. Such books and records and other papers
3 and documents shall, at all times during business hours of the day, be
4 available for and subject to inspection by the director, or the director's duly
5 authorized agents and employees, for a period of three years from the last
6 day of the calendar year or of the fiscal year of the retailer, whichever
7 comes later, to which the records pertain. Such records shall be preserved
8 during the entire period during which they are subject to inspection by the
9 director, unless the director in writing previously authorizes their disposal.
10 Any person selling tangible personal property or furnishing taxable
11 services shall be prohibited from asserting that any sales are exempt from
12 taxation unless the retailer has in the retailer's possession a properly
13 executed exemption certificate provided by the consumer claiming the
14 exemption, except as follows: (1) A retailer is relieved of liability for tax
15 otherwise applicable if the retailer obtains a fully completed exemption
16 certificate or captures the relevant data elements required by the director
17 within 90 days subsequent to the date of the sale; or (2) if the retailer has
18 not obtained an exemption certificate or all relevant data elements, the
19 retailer, within 120 days subsequent to a request for substantiation by the
20 director, either may obtain a fully completed exemption certificate from
21 the purchaser, taken in good faith which meets the requirements specified
22 in this subsection, or obtain other information establishing that the
23 transaction was not subject to tax. Otherwise, the sales shall be deemed to
24 be taxable sales under this act. The seller shall obtain an exemption
25 certificate that claims an exemption that was authorized pursuant to
26 Kansas law on the date of the transaction in the jurisdiction where the
27 transaction is sourced pursuant to law, could be applicable to the item
28 being purchased and is reasonable for the purchaser's type of business. If
29 the seller obtains an exemption certificate or other information as
30 described in this subsection, the seller is relieved of any liability for the tax
31 on the transaction unless it is discovered through the audit process that the
32 seller had knowledge or had reason to know at the time such information
33 was provided that the information relating to the exemption claimed was
34 materially false or the seller otherwise knowingly participated in activity
35 intended to purposefully evade the tax that is properly due on the
36 transaction, and it must be established that the seller had knowledge or had
37 reason to know at the time the information was provided that the
38 information was materially false.

39 (b) The amount of tax imposed by this act is to be assessed within
40 three years after the return is filed, and no proceedings in court for the
41 collection of such taxes shall begin after the expiration of such period. In
42 the case of a false or fraudulent return with intent to evade tax, the tax may
43 be assessed or a proceeding in court for collection of such tax may begin at

1 any time within two years from the discovery of such fraud. No
2 assessment shall be made for any period preceding the date of registration
3 of the retailer by more than three years except in cases of fraud. For any
4 refund or credit claim filed after July 1, 2011, no refund or credit shall be
5 allowed by the director after three years from the due date of the return for
6 the reporting period as provided by K.S.A. 79-3607, and amendments
7 thereto, unless before the expiration of such period a claim therefor is filed
8 by the taxpayer, and, except as otherwise provided in K.S.A. 2017 Supp.
9 79-3694, and amendments thereto, no suit or action to recover on any
10 claim for refund shall be commenced, until after the expiration of six
11 months from the date of filing such claim satisfying the requirements
12 specified by K.S.A. 2017 Supp. 79-3693, and amendments thereto,
13 therefor with the director. A refund claim shall not be deemed filed unless
14 such claim is complete as required by K.S.A. 2017 Supp. 79-3693, and
15 amendments thereto. For all mailed returns, including refund claims, each
16 return or refund claim shall be presumed to have been filed with the
17 department on the postmark date of such return or refund claim or if such
18 date is illegible, the date three days prior to the date such return or refund
19 claim is received.

20 (c) Before the expiration of time prescribed in this section for the
21 assessment of additional tax or the filing of a claim for refund, the director
22 is hereby authorized to enter into an agreement in writing with the
23 taxpayer consenting to the extension of the periods of limitations for the
24 assessment of tax or for the filing of a claim for refund, at any time prior to
25 the expiration of the period of limitations. The period so agreed upon may
26 be extended by subsequent agreements in writing made before the
27 expiration of the period previously agreed upon. In consideration of such
28 agreement or agreements, interest due in excess of 48 months on any
29 additional tax shall be waived.

30 (d) Interest at the rate prescribed by K.S.A. 79-2968, and
31 amendments thereto, shall be allowed on any overpayment of tax
32 computed from the filing date of the return claiming the refund, except that
33 no interest shall be allowed on any such refund if the same is paid within
34 120 days after the filing date of the return claiming the refund or the date
35 of payment, whichever is later, provided that such return or refund claim
36 satisfies the requirements specified by K.S.A. 2017 Supp. 79-3693, and
37 amendments thereto, at the time the return or refund claim is received.

38 (e) Notwithstanding any other provision of this section or the
39 provisions of the Kansas compensating tax act:

40 (1) (A) Any claim for refund of tax imposed by the Kansas retailers'
41 sales tax act or the Kansas compensating tax act based upon the provisions
42 of ~~subsection (kk) of~~ K.S.A. 79-3606(kk) in existence prior to its
43 amendment by this act which is without dispute shall be allowed, but, with

1 respect to any claim exceeding \$10,000, the refund associated therewith
2 shall not be paid until after 510 days from the date such claim was filed
3 and shall not include interest from such date. As used in this subparagraph,
4 a claim for refund without dispute shall not include any claim the basis for
5 which is a judicial or quasi-judicial interpretation of such subsection
6 occurring after the effective date of this act.

7 (B) Any refund of tax resulting from a final determination or
8 adjudication with regard to any claim submitted or to be submitted for
9 refund of tax imposed by the Kansas retailers' sales tax act or the Kansas
10 compensating tax act based upon the provisions of ~~subsection (kk) of~~
11 K.S.A. 79-3606(kk) in existence prior to its amendment by this act not
12 described by subparagraph (A) shall, with respect to any refund exceeding
13 \$50,000, be paid in equal annual installments over 10 years commencing
14 with the year of such final determination or adjudication. Interest shall not
15 accrue during the time period of such payment.

16 (2) No claim for refund of tax imposed by the Kansas retailers' sales
17 tax act or the Kansas compensating tax act based upon the application of
18 the provisions of ~~subsection (n) of~~ K.S.A. 79-3606(n), and amendments
19 thereto, pursuant to its interpretation by the court of appeals of the state of
20 Kansas in its opinion filed on August 13, 1999, in the case entitled In re
21 appeal of Water District No. 1 of Johnson County shall be allowed for tax
22 paid prior to the effective date of this act. The provisions of this subsection
23 shall not be applicable to water district no. 1 of Johnson county.

24 (3) *No claim for refund of tax imposed by the Kansas retailers' sales*
25 *tax act or the Kansas compensating tax act based upon the application of*
26 *the provisions of K.S.A. 79-3603(p), pursuant to its interpretation by the*
27 *court of appeals of the state of Kansas in its opinion filed on April 14,*
28 *2017, in the case entitled In re appeal of Lowe's Home Centers, L.L.C.,*
29 *No. 115,254, or by any other appellate court considering such decision,*
30 *shall be allowed for tax paid prior to the effective date of this act. The*
31 *provisions of this subsection shall not be applicable to Lowe's Home*
32 *Centers L.L.C.*

33 Sec. 3. K.S.A. 2017 Supp. 79-3603 and 79-3609 are hereby repealed.

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