

HOUSE BILL No. 2352

By Committee on Taxation

2-14

1 AN ACT concerning sales and compensating use tax; relating to
2 imposition of tax; nexus; remote sellers; marketplace facilitators;
3 digital property and subscription services; amending K.S.A. 2018 Supp.
4 79-3602, 79-3603 and 79-3702 and repealing the existing sections.

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

7 New Section 1. Sections 1 through 9, and amendments thereto, shall
8 be known and may be cited as the Kansas main street parity act.

9 New Sec. 2. As used in the Kansas main street parity act:

10 (a) "Act" means the Kansas main street parity act.

11 (b) "Affiliated person" means a person that, with respect to another
12 person: (1) Has an ownership interest of more than 5%, whether direct or
13 indirect, in the other person; or (2) is related to the other person because a
14 third person, or group of third persons who are affiliated persons with
15 respect to each other, holds an ownership interest of more than 5%,
16 whether direct or indirect, in the related persons.

17 (c) "Delivery" means the method by which a retailer delivers tangible
18 personal property or a service that it has sold to a customer, however
19 effected, including through electronic delivery. A delivery includes a
20 delivery made by the retailer itself, a related person or a contract party.

21 (d) "Delivery company" means an unrelated person that, pursuant to
22 an agreement with a retailer, delivers tangible personal property or services
23 sold by such retailer and may also provide additional services, including
24 order fulfillment, order management, return processing, the preparation of
25 sales reports or other analytics and consumer access to customer service.

26 (e) "Department" means the Kansas department of revenue.

27 (f) "Internet retailer" means a person that derives sales from
28 transactions consummated over the internet, whether such transactions are:

29 (1) Completed on a website maintained or operated by the internet
30 retailer itself, or a website maintained or operated by a related person or a
31 person with which the internet retailer contracts, including a marketplace
32 facilitator; or

33 (2) fulfilled by a related person or a person with which the internet
34 retailer contracts.

35 An internet retailer, in addition to its internet sales, may also derive
36 sales from orders completed other than over the internet.

1 (g) "Marketplace facilitator" means a person that, pursuant to an
2 agreement with an Internet retailer, facilitates sales by such internet retailer
3 through a physical or electronic marketplace operated by the person, and
4 engages:

5 (1) Directly or indirectly, through one or more related persons in any
6 of the following:

7 (A) Transmitting or otherwise communicating the offer or acceptance
8 between a buyer and internet retailer;

9 (B) owning or operating the infrastructure, electronic or physical, or
10 technology that brings buyers and internet retailers together;

11 (C) providing a virtual currency that buyers are allowed or required to
12 use to purchase products from the internet retailer; or

13 (D) software development or research and development activities
14 related to any of the activities described in this subsection, if such
15 activities are directly related to a physical or electronic marketplace
16 operated by the person or a related person; and

17 (2) in any of the following activities with respect to the internet
18 retailer's products:

19 (A) Payment processing services;

20 (B) fulfillment or storage services;

21 (C) listing products for sale;

22 (D) setting prices;

23 (E) branding sales as those of the marketplace facilitator;

24 (F) order taking;

25 (G) advertising or promotion; or

26 (H) providing customer service or accepting or assisting with returns
27 or exchanges.

28 (h) "Kansas sales" means all sales made by a retailer of tangible
29 personal property or services delivered into the state, however
30 consummated.

31 (i) "Marketplace seller" means a seller that makes retail sales through
32 any physical or electronic marketplaces operated by a marketplace
33 facilitator or directly resulting from a referral by a referrer, regardless of
34 whether the seller is required to be registered with the department.

35 (j) "Online marketplace facilitator" means a marketplace facilitator
36 that facilitates sales through an electronic marketplace.

37 (k) "Otherwise subject to tax" means Kansas sales or use tax
38 jurisdiction over a retailer, including an internet retailer, that is conferred
39 by in-state contacts other than as referenced in this subsection.

40 (l) "Platform" means an electronic or physical medium, including a
41 website or catalog, operated by a referrer.

42 (m) "Referral" means the transfer by a referrer of a potential customer
43 to a marketplace seller that advertises or lists products for sale on the

1 referrer's platform.

2 (n) "Referrer" means a person, other than a person engaging in the
3 business of printing a newspaper or publishing a newspaper, who contracts
4 or otherwise agrees with a seller to list or advertise for sale one or more
5 items in any medium, including a website or catalog; receives a
6 commission, fee or other consideration from the seller for the listing or
7 advertisement; transfers, via telephone, internet link, or other means, a
8 purchaser to a seller or an affiliated person to complete the sale; and does
9 not collect receipts from the purchasers for the transaction.

10 "Referrer" does not include a person that:

11 (1) Provides internet advertising services; and

12 (2) does not ever provide either the marketplace seller's shipping
13 terms or advertise whether a marketplace seller charges sales tax.

14 (o) "Sale" or "sales" shall have the same meaning as defined in
15 K.S.A. 79-3602(kk), whether or not such sales qualify for a sales tax
16 exemption.

17 (p) "Seller" shall have the same meaning as defined in K.S.A. 79-
18 3602(mm) and includes marketplace facilitators, whether making sales in
19 the seller's own right or on behalf of marketplace sellers.

20 (q) "Tax" means the sales tax imposed under K.S.A. 79-3603, and
21 amendments thereto, or the use tax imposed under K.S.A. 79-3703, and
22 amendments thereto.

23 (r) "Transaction" means a sale of tangible personal property or a
24 service by an internet retailer including, but not limited to, all such internet
25 retailer's transactions for tangible personal property or a service, however
26 consummated, including transactions completed on a website operated by:

27 (1) Such internet retailer;

28 (2) a related person; or

29 (3) a contract party, including a marketplace facilitator.

30 (s) The meaning ascribed to words and phrases in K.S.A. 79-3602,
31 and amendments thereto, insofar as practicable, shall be applicable herein
32 unless otherwise provided.

33 New Sec. 3. (a) On and after July 1, 2020, any marketplace facilitator
34 that meets the criteria in subsection (b) or that has a physical presence in
35 this state, must collect and remit retail sales or use tax on all taxable retail
36 sales into this state pursuant to this act. Marketplace facilitators must begin
37 collecting state and local retail sales or use taxes on taxable retail sales
38 sourced to this state beginning on the first day of the next calendar month
39 that is at least 30 days from the date that the marketplace facilitator met
40 the threshold described in subsection (b).

41 (b) A marketplace facilitator is subject to subsection (a) if:

42 (1) (A) For calendar year 2018, the marketplace facilitator had in
43 excess of \$100,000 of cumulative gross receipts from retail sales sourced

1 to this state;

2 (B) for the period beginning on January 1, 2019, through June 30,
3 2019, the marketplace facilitator had in excess of \$100,000 of cumulative
4 gross receipts from retail sales sourced to this state; or

5 (C) during the current or immediately preceding calendar year, the
6 marketplace facilitator had in excess of \$100,000 of cumulative gross
7 receipts from retail sales sourced to this state.

8 (2) (A) For any marketplace facilitator who satisfies the provisions of
9 subsection (b)(1), such retailer shall not be required to collect and remit
10 any taxes from sales occurring prior to July 1, 2019.

11 (B) For any marketplace facilitator who satisfies the provisions of
12 subsection (b)(1)(C) for sales in the current calendar year for the first time,
13 such marketplace facilitator shall be required to collect and remit the tax
14 on any sales in excess of the \$100,000 of cumulative gross receipts from
15 sales in the current calendar year by the marketplace facilitator to
16 customers in this state.

17 New Sec. 4. (a) (1) For purposes of this act, and both the Kansas
18 retailers' sales tax act and the Kansas compensating tax act, a marketplace
19 facilitator is deemed to be an agent of any marketplace seller making retail
20 sales through the marketplace facilitator's physical or electronic
21 marketplace.

22 (2) In addition to other applicable recordkeeping requirements, the
23 department may require a marketplace facilitator or referrer to provide or
24 make available to the department any information the department
25 determines is reasonably necessary to enforce the provisions of this act,
26 the Kansas retailers' sales tax act and the Kansas compensating tax act.
27 Such information may include documentation of sales made by
28 marketplace sellers through the marketplace facilitator's physical or
29 electronic marketplace. The department may prescribe by rules and
30 regulations the form and manner for providing this information.

31 (b) A marketplace facilitator is relieved of liability under this act for
32 failure to collect the correct amount of tax to the extent that the
33 marketplace facilitator can show to the department's satisfaction that the
34 error was due to incorrect information given to the marketplace facilitator
35 by the marketplace seller, unless the marketplace facilitator and
36 marketplace seller are affiliated persons. When the marketplace facilitator
37 is relieved of liability under this subsection, the marketplace seller is
38 solely liable for the amount of uncollected tax due.

39 (c) Except as otherwise provided in this section, a marketplace seller
40 obligated to collect the taxes imposed under this act is not required to
41 collect such taxes on all taxable retail sales through a marketplace operated
42 by a marketplace facilitator if the marketplace seller has obtained
43 documentation from the marketplace facilitator indicating that the

1 marketplace facilitator is registered with the department and will collect all
2 applicable taxes due under this act, the Kansas retailers' sales tax act or the
3 Kansas compensating tax act on all taxable retail sales made on behalf of
4 the marketplace seller through the marketplace operated by the
5 marketplace facilitator. The documentation required by this subsection
6 must be provided in a form and manner prescribed by or acceptable to the
7 department. This subsection does not relieve a marketplace seller from
8 liability for uncollected taxes due under this act, the Kansas retailers' sales
9 tax act or the Kansas compensating tax act resulting from a marketplace
10 facilitator's failure to collect the proper amount of tax due when the error
11 was due to incorrect information given to the marketplace facilitator by the
12 marketplace seller.

13 (d) No class action may be brought against a marketplace facilitator
14 in any court of this state on behalf of purchasers arising from or in any
15 way related to an overpayment of sales or use tax collected by the
16 marketplace facilitator or referrer, regardless of whether that claim is
17 characterized as a tax refund claim. Nothing in this subsection affects a
18 purchaser's right to seek a refund from the department as provided by the
19 Kansas retailers' sales tax act.

20 New Sec. 5. (a) Except as otherwise provided in this act, taxes
21 imposed under the Kansas retailers' sales tax act or the Kansas
22 compensating tax act and payable by a consumer directly to the
23 department are due, on returns prescribed by the department, as prescribed
24 by those acts.

25 (b) Nothing in this act affects the obligation of any purchaser from
26 this state to remit retail sales or use tax as to any applicable taxable
27 transaction in which the seller does not collect and remit retail sales or use
28 tax.

29 New Sec. 6. (a) A marketplace facilitator that is subject to section 3,
30 and amendments thereto, and is complying with the requirements of the
31 Kansas retailers' sales tax act or the Kansas compensating tax act may only
32 seek a recovery of retail sales and use taxes, penalties or interest from the
33 department by following the recovery procedures established under the
34 Kansas retailers' sales tax act. However, no claim may be granted on the
35 basis that the taxpayer lacked a physical presence in this state and
36 complied with the tax collection provisions of the Kansas retailers' sales
37 tax act or the Kansas compensating tax act voluntarily.

38 (b) Neither the state nor any seller who collects and remits retail sales
39 or use tax under section 3, and amendments thereto, is liable to a purchaser
40 that claims that the retail sales or use tax has been over-collected because a
41 provision of this act is later deemed unlawful.

42 New Sec. 7. Except as otherwise provided in this act, the provisions
43 of K.S.A. 79-3601 through 79-3696, and amendments thereto, relating to

1 enforcement, collection and administration, insofar as practicable, shall
2 have full force and effect with respect to taxes imposed under the
3 provisions of the Kansas main street parity act.

4 New Sec. 8. The secretary of revenue shall adopt such rules and
5 regulations as deemed necessary for the administration of this act.

6 New Sec. 9. If any provision of the Kansas main street parity act or
7 the application thereof to any person or circumstance is held invalid, the
8 invalidity shall not affect other provisions or applications of the act that
9 can be given effect without the invalid provision or application, and to this
10 end the provisions of this act are severable.

11 Sec. 10. K.S.A. 2018 Supp. 79-3602 is hereby amended to read as
12 follows: 79-3602. Except as otherwise provided, as used in the Kansas
13 retailers' sales tax act:

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

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

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

21 (d) *"Ancillary services" means services that are associated with or*
22 *incidental to the provision of telecommunications services, including, but*
23 *not limited to, detailed communications billing, directory assistance,*
24 *vertical service and voice mail services.*

25 (e) *"Applications" or "apps" means software programs, services or*
26 *resources made available to users via the internet, designed to perform a*
27 *group of coordinated functions, tasks or activities and includes, but is not*
28 *limited to, cloud-based applications, desktop applications, mobile*
29 *applications, native applications and web applications.*

30 (f) "Certified automated system (CAS)" means software certified
31 under the agreement to calculate the tax imposed by each jurisdiction on a
32 transaction, determine the amount of tax to remit to the appropriate state
33 and maintain a record of the transaction.

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

37 (h) "Computer" means an electronic device that accepts
38 information in digital or similar form and manipulates it for a result based
39 on a sequence of instructions.

40 (i) "Computer software" means a set of coded instructions
41 designed to cause a computer or automatic data processing equipment to
42 perform a task.

43 (j) *"Conference bridging service" means an ancillary service that*

1 *links two or more participants of an audio or video conference call and*
2 *may include the provision of a telephone number. "Conference bridging*
3 *service" does not include the telecommunications services used to reach*
4 *the conference bridge.*

5 *(k) "Delivered electronically" means delivered to the purchaser by*
6 *means other than tangible storage media.*

7 *(l) "Delivery charges" means charges by the seller of personal*
8 *property or services for preparation and delivery to a location designated*
9 *by the purchaser of personal property or services including, but not limited to,*
10 *transportation, shipping, postage, handling, crating and packing.*
11 *Delivery charges shall not include charges for delivery of direct mail if the*
12 *charges are separately stated on an invoice or similar billing document*
13 *given to the purchaser.*

14 *(m) "Detailed telecommunications billing service" means an*
15 *ancillary service of separately stating information pertaining to individual*
16 *calls on a customer's billing statement.*

17 *(n) "Digital audio-visual works" means a series of related images*
18 *that, when shown in succession, impart an impression of motion, with*
19 *accompanying sounds, if any, and includes, but is not limited to, movies,*
20 *motion pictures, musical videos, news and entertainment programs, and*
21 *live events. "Digital audio-visual works" shall not include video greeting*
22 *cards, video games or electronic games.*

23 *(o) "Digital audio works" means works that result from the fixation of*
24 *a series of musical, spoken or other sounds and includes, but is not limited*
25 *to, ringtones, recorded or live songs, music, readings of books or other*
26 *written materials, speeches or other sound recordings. "Digital audio*
27 *works" shall not include audio greeting cards sent by electronic mail.*

28 *(p) "Digital books" means works that are generally recognized in the*
29 *ordinary and usual sense as books, including any literary work expressed*
30 *in words, numbers or other verbal or numerical symbols or indicia if the*
31 *literary work is generally recognized in the ordinary or usual sense as a*
32 *book. "Digital books" shall not include digital audio-visual works, digital*
33 *audio works, periodicals, magazines, newspapers or other news or*
34 *information products, chat rooms or web logs.*

35 *(q) (1) "Digital code" means a code that provides a purchaser with a*
36 *right to obtain one or more types of digital property. A "digital code" may*
37 *be obtained by any means, including electronic mail messaging or by*
38 *tangible means, regardless of the code's designation as a song code, video*
39 *code or book code.*

40 *(2) "Digital code" shall not include a code that represents:*

41 *(A) A stored monetary value that is deducted from a total as it is used*
42 *by the purchaser; or*

43 *(B) a redeemable card, gift card or gift certificate that entitles the*

1 holder to select specific types of digital property.

2 (r) "Digital property" means media or products that are encoded in
3 machine-readable formats and includes, but is not limited to, any of the
4 following that are transferred electronically:

- 5 (1) Digital audio-visual works;
- 6 (2) digital audio works;
- 7 (3) digital books;
- 8 (4) artwork;
- 9 (5) digital photographs and pictures;
- 10 (6) periodicals;
- 11 (7) newspapers;
- 12 (8) magazines;
- 13 (9) video, audio and other greeting cards;
- 14 (10) graphics;
- 15 (11) templates;
- 16 (12) patterns;
- 17 (13) desktop applications;
- 18 (14) mobile applications;
- 19 (15) web applications;
- 20 (16) cloud-based applications;
- 21 (17) native applications;
- 22 (18) online games;
- 23 (19) video games;
- 24 (20) electronic games;
- 25 (21) any digital code related to any of the items listed above; or
- 26 (22) any streaming services related to any of the items listed above.

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

35 ~~(t)~~(t) "Director" means the state director of taxation.

36 (u) "Directory assistance" means an ancillary service of providing
37 telephone number information or address information, or both.

38 ~~(v)~~(v) "Educational institution" means any nonprofit school, college
39 and university that offers education at a level above the 12th grade, and
40 conducts regular classes and courses of study required for accreditation by,
41 or membership in, the higher learning commission, the state board of
42 education, or that otherwise qualify as an "educational institution," as
43 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall

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

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

17 (x) *"Entity-based exemption" means an exemption based on who*
18 *purchases the product or who sells the product. An exemption that is*
19 *available to all individuals shall not be considered an entity-based*
20 *exemption.*

21 ~~(n)~~(y) "Food and food ingredients" means substances, whether in
22 liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold
23 for ingestion or chewing by humans and are consumed for their taste or
24 nutritional value. "Food and food ingredients" does not include alcoholic
25 beverages or tobacco.

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

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

1 set forth:

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

5 (2) Containers, labels, shipping cases, paper bags, drinking straws,
6 paper plates, paper cups, twine and wrapping paper used in the distribution
7 and sale of property taxable under the provisions of this act by wholesalers
8 and retailers and which is not to be returned to such wholesaler or retailer
9 for reuse.

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

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

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

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

21 *(bb) "International" means a telecommunications service that*
22 *originates or terminates in the United States and terminates or originates*
23 *outside the United States, respectively. The United States includes the*
24 *District of Columbia or a U.S. territory or possession.*

25 *(cc) "Interstate" means a telecommunications service that originates*
26 *in a state within the United States, or a United States territory or*
27 *possession, and terminates in a different state within the United States or a*
28 *United States territory or possession.*

29 *(dd) "Intrastate" means a telecommunications service that originates*
30 *in a state within the United States or a United States territory or*
31 *possession, and terminates in the same state within the United States or a*
32 *United States territory or possession.*

33 ~~(e)~~*(ee) "Isolated or occasional sale" means the nonrecurring sale of*
34 *tangible personal property, or services taxable hereunder by a person not*
35 *engaged at the time of such sale in the business of selling such property or*
36 *services. Any religious organization which makes a nonrecurring sale of*
37 *tangible personal property acquired for the purpose of resale shall be*
38 *deemed to be not engaged at the time of such sale in the business of selling*
39 *such property. Such term shall include: (1) Any sale by a bank, savings and*
40 *loan institution, credit union or any finance company licensed under the*
41 *provisions of the Kansas uniform consumer credit code of tangible*
42 *personal property which has been repossessed by any such entity; and (2)*
43 *any sale of tangible personal property made by an auctioneer or agent on*

1 behalf of not more than two principals or households if such sale is
2 nonrecurring and any such principal or household is not engaged at the
3 time of such sale in the business of selling tangible personal property.

4 ~~(f)~~(ff) "Lease or rental" means any transfer of possession or control of
5 tangible personal property for a fixed or indeterminate term for
6 consideration. A lease or rental may include future options to purchase or
7 extend.

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

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

16 (C) providing tangible personal property along with an operator for a
17 fixed or indeterminate period of time. A condition of this exclusion is that
18 the operator is necessary for the equipment to perform as designed. For the
19 purpose of this subsection, an operator must do more than maintain,
20 inspect or set-up the tangible personal property.

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

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

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

33 ~~(g)~~(gg) "Load and leave" means delivery to the purchaser by use of a
34 tangible storage media where the tangible storage media is not physically
35 transferred to the purchaser.

36 ~~(h)~~(hh) "Member state" means a state that has entered in the
37 agreement, pursuant to provisions of article VIII of the agreement.

38 ~~(i)~~(ii) "Model 1 seller" means a seller that has selected a CSP as its
39 agent to perform all the seller's sales and use tax functions, other than the
40 seller's obligation to remit tax on its own purchases.

41 ~~(j)~~(jj) "Model 2 seller" means a seller that has selected a CAS to
42 perform part of its sales and use tax functions, but retains responsibility for
43 remitting the tax.

1 ~~(w)~~(kk) "Model 3 seller" means a seller that has sales in at least five
2 member states, has total annual sales revenue of at least \$500,000,000, has
3 a proprietary system that calculates the amount of tax due each jurisdiction
4 and has entered into a performance agreement with the member states that
5 establishes a tax performance standard for the seller. As used in this
6 subsection a seller includes an affiliated group of sellers using the same
7 proprietary system.

8 ~~(x)~~(ll) "Municipal corporation" means any city incorporated under the
9 laws of Kansas.

10 ~~(y)~~(mm) "Nonprofit blood bank" means any nonprofit place,
11 organization, institution or establishment that is operated wholly or in part
12 for the purpose of obtaining, storing, processing, preparing for transfusing,
13 furnishing, donating or distributing human blood or parts or fractions of
14 single blood units or products derived from single blood units, whether or
15 not any remuneration is paid therefor, or whether such procedures are done
16 for direct therapeutic use or for storage for future use of such products.

17 (nn) *"Over-the-counter drug" means a drug that contains a label that*
18 *identifies the product as a drug as required by 21 C.F.R. § 201.66. The*
19 *over-the-counter drug label includes: (1) A drug facts panel; or (2) a*
20 *statement of the active ingredients with a list of those ingredients*
21 *contained in the compound, substance or preparation. "Over-the-counter*
22 *drugs" do not include grooming and hygiene products such as soaps,*
23 *cleaning solutions, shampoo, toothpaste, antiperspirants and suntan*
24 *lotions and screens.*

25 (z)(oo) "Persons" means any individual, firm, copartnership, joint
26 adventure, association, corporation, estate or trust, receiver or trustee, or
27 any group or combination acting as a unit, and the plural as well as the
28 singular number; and shall specifically mean any city or other political
29 subdivision of the state of Kansas engaging in a business or providing a
30 service specifically taxable under the provisions of this act.

31 (aa)(pp) "Political subdivision" means any municipality, agency or
32 subdivision of the state which is, or shall hereafter be, authorized to levy
33 taxes upon tangible property within the state or which certifies a levy to a
34 municipality, agency or subdivision of the state which is, or shall hereafter
35 be, authorized to levy taxes upon tangible property within the state. Such
36 term also shall include any public building commission, housing, airport,
37 port, metropolitan transit or similar authority established pursuant to law
38 and the horsethief reservoir benefit district established pursuant to K.S.A.
39 82a-2201, and amendments thereto.

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

43 (ee)(rr) "Prewritten computer software" means computer software,

1 including prewritten upgrades, which is not designed and developed by the
2 author or other creator to the specifications of a specific purchaser. The
3 combining of two or more prewritten computer software programs or
4 prewritten portions thereof does not cause the combination to be other than
5 prewritten computer software. Prewritten computer software includes
6 software designed and developed by the author or other creator to the
7 specifications of a specific purchaser when it is sold to a person other than
8 the purchaser. Where a person modifies or enhances computer software of
9 which the person is not the author or creator, the person shall be deemed to
10 be the author or creator only of such person's modifications or
11 enhancements. Prewritten computer software or a prewritten portion
12 thereof that is modified or enhanced to any degree, where such
13 modification or enhancement is designed and developed to the
14 specifications of a specific purchaser, remains prewritten computer
15 software, except that where there is a reasonable, separately stated charge
16 or an invoice or other statement of the price given to the purchaser for
17 such modification or enhancement, such modification or enhancement
18 shall not constitute prewritten computer software.

19 ~~(dd)~~(ss) "Property which is consumed" means tangible personal
20 property which is essential or necessary to and which is used in the actual
21 process of and consumed, depleted or dissipated within one year in: (1)
22 The production, manufacture, processing, mining, drilling, refining or
23 compounding of tangible personal property; (2) the providing of services;
24 (3) the irrigation of crops, for sale in the regular course of business; or (4)
25 the storage or processing of grain by a public grain warehouse or other
26 grain storage facility, and which is not reusable for such purpose. The
27 following is a listing of tangible personal property, included by way of
28 illustration but not of limitation, which qualifies as property which is
29 consumed:

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

35 (B) electricity, gas and water; and

36 (C) petroleum products, lubricants, chemicals, solvents, reagents and
37 catalysts.

38 ~~(ee)~~(tt) "Purchase price" applies to the measure subject to use tax and
39 has the same meaning as sales price.

40 ~~(ff)~~(uu) "Purchaser" means a person to whom a sale of personal
41 property is made or to whom a service is furnished.

42 ~~(gg)~~(vv) "Quasi-municipal corporation" means any county, township,
43 school district, drainage district or any other governmental subdivision in

1 the state of Kansas having authority to receive or hold moneys or funds.

2 ~~(hh)~~(ww) "Registered under this agreement" means registration by a
3 seller with the member states under the central registration system
4 provided in article IV of the agreement.

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

9 ~~(jj)~~(yy) "Retail sale" or "sale at retail" means any sale, lease or rental
10 for any purpose other than for resale, sublease or subrent.

11 ~~(kk)~~(zz) "Sale" or "sales" means the exchange of tangible personal
12 property, as well as the sale thereof for money, and every transaction,
13 conditional or otherwise, for a consideration, constituting a sale, including
14 the sale or furnishing of electrical energy, gas, water, services or
15 entertainment taxable under the terms of this act and including, except as
16 provided in the following provision, the sale of the use of tangible personal
17 property by way of a lease, license to use or the rental thereof regardless of
18 the method by which the title, possession or right to use the tangible
19 personal property is transferred. The term "sale" or "sales" shall not mean
20 the sale of the use of any tangible personal property used as a dwelling by
21 way of a lease or rental thereof for a term of more than 28 consecutive
22 days.

23 ~~(H)~~(aaa) (1) "Sales or selling price" applies to the measure subject to
24 sales tax and means the total amount of consideration, including cash,
25 credit, property and services, for which personal property or services are
26 sold, leased or rented, valued in money, whether received in money or
27 otherwise, without any deduction for the following:

28 (A) The seller's cost of the property sold;

29 (B) the cost of materials used, labor or service cost, interest, losses,
30 all costs of transportation to the seller, all taxes imposed on the seller and
31 any other expense of the seller;

32 (C) charges by the seller for any services necessary to complete the
33 sale, other than delivery and installation charges;

34 (D) delivery charges; and

35 (E) installation charges.

36 (2) "Sales or selling price" includes consideration received by the
37 seller from third parties if:

38 (A) The seller actually receives consideration from a party other than
39 the purchaser and the consideration is directly related to a price reduction
40 or discount on the sale;

41 (B) the seller has an obligation to pass the price reduction or discount
42 through to the purchaser;

43 (C) the amount of the consideration attributable to the sale is fixed

1 and determinable by the seller at the time of the sale of the item to the
2 purchaser; and

3 (D) one of the following criteria is met:

4 (i) The purchaser presents a coupon, certificate or other
5 documentation to the seller to claim a price reduction or discount where
6 the coupon, certificate or documentation is authorized, distributed or
7 granted by a third party with the understanding that the third party will
8 reimburse any seller to whom the coupon, certificate or documentation is
9 presented;

10 (ii) the purchaser identifies to the seller that the purchaser is a
11 member of a group or organization entitled to a price reduction or
12 discount. A preferred customer card that is available to any patron does not
13 constitute membership in such a group; or

14 (iii) the price reduction or discount is identified as a third party price
15 reduction or discount on the invoice received by the purchaser or on a
16 coupon, certificate or other documentation presented by the purchaser.

17 (3) "Sales or selling price" shall not include:

18 (A) Discounts, including cash, term or coupons that are not
19 reimbursed by a third party that are allowed by a seller and taken by a
20 purchaser on a sale;

21 (B) interest, financing and carrying charges from credit extended on
22 the sale of personal property or services, if the amount is separately stated
23 on the invoice, bill of sale or similar document given to the purchaser;

24 (C) any taxes legally imposed directly on the consumer that are
25 separately stated on the invoice, bill of sale or similar document given to
26 the purchaser;

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

30 (E) commencing on July 1, 2018, and ending on June 30, 2021, cash
31 rebates granted by a manufacturer to a purchaser or lessee of a new motor
32 vehicle if paid directly to the retailer as a result of the original sale.

33 ~~(mm)~~(bbb) "Seller" means a person making sales, leases or rentals of
34 personal property or services.

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

37 ~~(oo)~~(ddd) "Sourcing rules" means the rules set forth in K.S.A. 2018
38 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and
39 amendments thereto, which shall apply to identify and determine the state
40 and local taxing jurisdiction sales or use taxes to pay, or collect and remit
41 on a particular retail sale.

42 ~~(pp)~~(eee) "Tangible personal property" means personal property that
43 can be seen, weighed, measured, felt or touched, or that is in any other

1 manner perceptible to the senses. Tangible personal property includes
2 electricity, water, gas, steam and prewritten computer software.

3 ~~(qq)~~(fff) "Taxpayer" means any person obligated to account to the
4 director for taxes collected under the terms of this act.

5 (ggg) "*Telecommunications service*" means the electronic
6 transmission, conveyance or routing of voice, data, audio, video or any
7 other information or signals to a point, or between or among points. The
8 term "*telecommunications service*" includes such transmission,
9 conveyance or routing in which computer processing applications are
10 used to act on the form, code or protocol of the content for purposes of
11 transmissions, conveyance or routing without regard to whether such
12 service is referred to as voice over internet protocol service or is classified
13 by the federal communications commission as enhanced or value added.
14 "*Telecommunications service*" does not include:

15 (1) *Data processing and information services that allow data to be*
16 *generated, acquired, stored, processed or retrieved and delivered by an*
17 *electronic transmission to a purchaser when such purchaser's primary*
18 *purpose for the underlying transaction is the processed data or*
19 *information;*

20 (2) *installation or maintenance of wiring or equipment on a*
21 *customer's premises;*

22 (3) *tangible personal property;*

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

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

25 (6) *internet access service;*

26 (7) *radio and television audio and video programming services,*
27 *regardless of the medium, including the furnishing of transmission,*
28 *conveyance and routing of such services by the programming service*
29 *provider. Radio and television audio and video programming services*
30 *shall include, but not be limited to, cable service as defined in 47 U.S.C. §*
31 *522(6) and audio and video programming services delivered by*
32 *commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;*

33 (8) *ancillary services; or*

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

36 ~~(rr)~~(hhh) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco
37 or any other item that contains tobacco.

38 ~~(ss)~~—"Entity-based exemption" means an exemption based on who
39 purchases the product or who sells the product. An exemption that is
40 available to all individuals shall not be considered an entity-based
41 exemption.

42 ~~(tt)~~—"Over-the-counter drug" means a drug that contains a label that
43 identifies the product as a drug as required by 21 C.F.R. § 201.66. The

1 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
2 statement of the active ingredients with a list of those ingredients
3 contained in the compound, substance or preparation. Over-the-counter
4 drugs do not include grooming and hygiene products such as soaps,
5 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan
6 lotions and screens.

7 (uu) ~~"Ancillary services" means services that are associated with or~~
8 ~~incidental to the provision of telecommunications services, including, but~~
9 ~~not limited to, detailed telecommunications billing, directory assistance,~~
10 ~~vertical service and voice mail services.~~

11 (vv) ~~"Conference bridging service" means an ancillary service that~~
12 ~~links two or more participants of an audio or video conference call and~~
13 ~~may include the provision of a telephone number. Conference bridging~~
14 ~~service does not include the telecommunications services used to reach the~~
15 ~~conference bridge.~~

16 (ww) ~~"Detailed telecommunications billing service" means an~~
17 ~~ancillary service of separately stating information pertaining to individual~~
18 ~~calls on a customer's billing statement.~~

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

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

26 (yy)(jjj) ~~"Vertical service" means an ancillary service that is offered~~
27 ~~in connection with one or more telecommunications services, which offers~~
28 ~~advanced calling features that allow customers to identify callers and to~~
29 ~~manage multiple calls and call connections, including conference bridging~~
30 ~~services.~~

31 (zz)(lll) ~~"Voice mail service" means an ancillary service that enables~~
32 ~~the customer to store, send or receive recorded messages. Voice mail~~
33 ~~service does not include any vertical services that the customer may be~~
34 ~~required to have in order to utilize the voice mail service.~~

35 (aaa) ~~"Telecommunications service" means the electronic~~
36 ~~transmission, conveyance or routing of voice, data, audio, video or any~~
37 ~~other information or signals to a point, or between or among points. The~~
38 ~~term telecommunications service includes such transmission, conveyance~~
39 ~~or routing in which computer processing applications are used to act on the~~
40 ~~form, code or protocol of the content for purposes of transmissions,~~
41 ~~conveyance or routing without regard to whether such service is referred to~~
42 ~~as voice over internet protocol services or is classified by the federal~~
43 ~~communications commission as enhanced or value added.~~

1 Telecommunications service does not include:

2 (1) ~~Data processing and information services that allow data to be~~
3 ~~generated, acquired, stored, processed or retrieved and delivered by an~~
4 ~~electronic transmission to a purchaser where such purchaser's primary~~
5 ~~purpose for the underlying transaction is the processed data or~~
6 ~~information;~~

7 (2) ~~installation or maintenance of wiring or equipment on a~~
8 ~~customer's premises;~~

9 (3) ~~tangible personal property;~~

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

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

12 (6) ~~internet access service;~~

13 (7) ~~radio and television audio and video programming services,~~
14 ~~regardless of the medium, including the furnishing of transmission,~~
15 ~~conveyance and routing of such services by the programming service~~
16 ~~provider. Radio and television audio and video programming services shall~~
17 ~~include, but not be limited to, cable service as defined in 47 U.S.C. §~~
18 ~~522(6) and audio and video programming services delivered by~~
19 ~~commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;~~

20 (8) ~~ancillary services; or~~

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

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

28 (eee)(nnn) "900 service" means an inbound toll telecommunications
29 service purchased by a subscriber that allows the subscriber's customers to
30 call in to the subscriber's prerecorded announcement or live service. 900
31 service does not include the charge for collection services provided by the
32 seller of the telecommunications services to the subscriber, or service or
33 product sold by the subscriber to the subscriber's customer. The service is
34 typically marketed under the name 900 service, and any subsequent
35 numbers designated by the federal communications commission.

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

41 (eee) "International" means a telecommunications service that
42 originates or terminates in the United States and terminates or originates
43 outside the United States, respectively. United States includes the District

1 of Columbia or a U.S. territory or possession.

2 ~~(fff) "Interstate" means a telecommunications service that originates~~
 3 ~~in one United States state, or a United States territory or possession, and~~
 4 ~~terminates in a different United States state or a United States territory or~~
 5 ~~possession.~~

6 ~~(ggg) "Intrastate" means a telecommunications service that originates~~
 7 ~~in one United States state or a United States territory or possession, and~~
 8 ~~terminates in the same United States state or a United States territory or~~
 9 ~~possession.~~

10 Sec. 11. K.S.A. 2018 Supp. 79-3603 is hereby amended to read as
 11 follows: 79-3603. For the privilege of engaging in the business of selling
 12 tangible personal property at retail in this state or rendering or furnishing
 13 any of the services taxable under this act, there is hereby levied and there
 14 shall be collected and paid a tax at the rate of 6.15%, and commencing
 15 July 1, 2015, at the rate of 6.5%. Within a redevelopment district
 16 established pursuant to K.S.A. 74-8921, and amendments thereto, there is
 17 hereby levied and there shall be collected and paid an additional tax at the
 18 rate of 2% until the earlier of the date the bonds issued to finance or
 19 refinance the redevelopment project have been paid in full or the final
 20 scheduled maturity of the first series of bonds issued to finance any part of
 21 the project upon:

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

24 (b) the gross receipts from intrastate, interstate or international
 25 telecommunications services and any ancillary services sourced to this
 26 state in accordance with K.S.A. 2018 Supp. 79-3673, and amendments
 27 thereto, except that telecommunications service does not include: (1) Any
 28 interstate or international 800 or 900 service; (2) any interstate or
 29 international private communications service as defined in K.S.A. 2018
 30 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
 31 data service; (4) any telecommunication service to a provider of
 32 telecommunication services which will be used to render
 33 telecommunications services, including carrier access services; or (5) any
 34 service or transaction defined in this section among entities classified as
 35 members of an affiliated group as provided by section 1504 of the federal
 36 internal revenue code of 1986, as in effect on January 1, 2001;

37 (c) the gross receipts from the sale or furnishing of gas, water,
 38 electricity and heat, which sale is not otherwise exempt from taxation
 39 under the provisions of this act, and whether furnished by municipally or
 40 privately owned utilities, except that, on and after January 1, 2006, for
 41 sales of gas, electricity and heat delivered through mains, lines or pipes to
 42 residential premises for noncommercial use by the occupant of such
 43 premises, and for agricultural use and also, for such use, all sales of

1 propane gas, the state rate shall be 0%; and for all sales of propane gas, LP
2 gas, coal, wood and other fuel sources for the production of heat or
3 lighting for noncommercial use of an occupant of residential premises, the
4 state rate shall be 0%, but such tax shall not be levied and collected upon
5 the gross receipts from: (1) The sale of a rural water district benefit unit;
6 (2) a water system impact fee, system enhancement fee or similar fee
7 collected by a water supplier as a condition for establishing service; or (3)
8 connection or reconnection fees collected by a water supplier;

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

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

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

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

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

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

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

43 (k) the gross receipts from cable, community antennae and other

1 subscriber radio and television services;

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

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

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

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

38 (o) the gross receipts received from the isolated or occasional sale of
39 motor vehicles or trailers but not including: (1) The transfer of motor
40 vehicles or trailers by a person to a corporation or limited liability
41 company solely in exchange for stock securities or membership interest in
42 such corporation or limited liability company; (2) the transfer of motor
43 vehicles or trailers by one corporation or limited liability company to

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

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

40 For the purposes of this subsection:

41 (1) "Original construction" shall mean the first or initial construction
42 of a new building or facility. The term "original construction" shall include
43 the addition of an entire room or floor to any existing building or facility,

1 the completion of any unfinished portion of any existing building or
2 facility and the restoration, reconstruction or replacement of a building,
3 facility or utility structure damaged or destroyed by fire, flood, tornado,
4 lightning, explosion, windstorm, ice loading and attendant winds,
5 terrorism or earthquake, but such term, except with regard to a residence,
6 shall not include replacement, remodeling, restoration, renovation or
7 reconstruction under any other circumstances;

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

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

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

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

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

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

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

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

- 1 (t) the gross receipts received for telephone answering services;
- 2 (u) the gross receipts received from the sale of prepaid calling service
3 and prepaid wireless calling service as defined in K.S.A. 2018 Supp. 79-
4 3673, and amendments thereto;
- 5 (v) all sales of bingo cards, bingo faces and instant bingo tickets by
6 licensees under K.S.A. 2018 Supp. 75-5171 et seq., and amendments
7 thereto, shall be exempt from taxes imposed pursuant to this section; ~~and~~
- 8 (w) all sales of charitable raffle tickets in accordance with K.S.A.
9 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
10 from taxes imposed pursuant to this section; *and*
- 11 *(x) all sales of digital property, and subscription services thereto,*
12 *regardless of whether: (1) The purchaser has the right to permanently use*
13 *the property; (2) the purchaser's right to access or retain the property is*
14 *not permanent; or (3) the purchaser's right of use is conditioned upon*
15 *continued payment.*
- 16 Sec. 12. K.S.A. 2018 Supp. 79-3702 is hereby amended to read as
17 follows: 79-3702. For the purposes of this act: (a) "Purchase price" means
18 the consideration paid or given or contracted to be paid or given by any
19 person to the seller of an article of tangible personal property for the article
20 purchased. The term shall include, in addition to the consideration paid or
21 given or contracted to be paid or given, the actual cost of transportation
22 from the place where the article was purchased to the person using the
23 same in this state. If a cash discount is allowed and taken on the sale it
24 shall be deducted in arriving at the purchase price.
- 25 (b) The meaning ascribed to words and phrases in K.S.A. 79-3602,
26 and amendments thereto, insofar as is practicable, shall be applicable
27 herein unless otherwise provided. The provisions of K.S.A. 79-3601 ~~to~~
28 ~~through~~ 79-3625, ~~inclusive~~, 79-3650, *and amendments thereto, and* K.S.A.
29 2018 Supp. 79-3693 and 79-3694, and amendments thereto, relating to
30 enforcement, collection and administration, insofar as practicable, shall
31 have full force and effect with respect to taxes imposed under the
32 provisions of this act.
- 33 (c) "Use" means the exercise within this state by any person of any
34 right or power over tangible personal property incident to the ownership of
35 that property, except that it shall not include processing, or the sale of the
36 property in the regular course of business, and except storage as
37 hereinafter defined.
- 38 (d) "Storage" means any keeping or retaining in this state for any
39 purpose except sale in the regular course of business or subsequent use
40 solely outside this state of tangible personal property purchased from a
41 retailer.
- 42 (e) "Storage" and "use" do not include the keeping, retaining or
43 exercising of any right or power over tangible personal property shipped or

1 brought into this state for the purpose of subsequently transporting it
2 outside the state for use thereafter solely outside the state, or for the
3 purpose of being processed, fabricated, or manufactured into, attached to
4 or incorporated into, other tangible personal property to be transported
5 outside the state and thereafter used solely outside the state.

6 (f) "Property used in processing" means: (1) Any tangible personal
7 property which, when used in fabrication, compounding, manufacturing or
8 germination, becomes an integral part of the new article resulting from
9 such fabrication, compounding, manufacturing, or germination, and
10 intended to be sold ultimately at retail; and (2) fuel which is consumed in
11 creating power, heat, or steam for processing or for generating electric
12 current.

13 (g) "Retailer" means every person engaged in the business of selling
14 tangible personal property for use within the meaning of this act, except
15 that, when in the opinion of the director it is necessary for the efficient
16 administration of this act to regard any salesperson, representatives,
17 truckers, peddlers or canvassers as the agents of the dealers, distributors,
18 supervisors, employers or persons under whom they operate or from whom
19 they obtain the tangible personal property sold by them, irrespective of
20 whether they are making sales on their own behalf or on behalf of such
21 dealers, distributors, supervisors, employers, or persons, the director may
22 so regard them and may regard the dealers, distributors, supervisors,
23 employers, or persons as retailers for the purposes of this act.

24 (h) (1) "Retailer doing business in this state" or any like term, means:
25 (A) Any retailer maintaining in this state, permanently, temporarily,
26 directly or indirectly through a subsidiary, agent or representative, an
27 office, distribution house, sales house, warehouse or other place of
28 business;

29 (B) any retailer utilizing an employee, independent contractor, agent,
30 representative, salesperson, canvasser, solicitor or other person operating
31 in this state either permanently or temporarily, for the purpose of selling,
32 delivering, installing, assembling, servicing, repairing, soliciting sales or
33 the taking of orders for tangible personal property;

34 (C) any retailer, including a contractor, repair person or other service
35 provider, who enters this state to perform services that are enumerated in
36 K.S.A. 79-3603, and amendments thereto, and who is required to secure a
37 retailer's sales tax registration certificate before performing those services;

38 (D) any retailer deriving rental receipts from a lease of tangible
39 personal property situated in this state;

40 (E) any person regularly maintaining a stock of tangible personal
41 property in this state for sale in the normal course of business; ~~and~~

42 (F) any retailer who has any other contact with this state that would
43 allow this state to require the retailer to collect and remit tax under the

1 provisions of the constitution and laws of the United States; and

2 (G) (i) for any retailer that does not satisfy any of the requirements
3 contained in subparagraphs (A) through (F), such retailer shall be a
4 retailer doing business in this state, if:

5 (a) For calendar year 2018, the retailer had in excess of \$100,000 of
6 cumulative gross receipts from sales by the retailer to customers in this
7 state;

8 (b) for the period beginning on January 1, 2019, through June 30,
9 2019, the retailer had in excess of \$100,000 of cumulative gross receipts
10 from sales by the retailer to customers in this state; or

11 (c) during the current or immediately preceding calendar year, the
12 retailer had in excess of \$100,000 of cumulative gross receipts from sales
13 by the retailer to customers in this state.

14 (ii) (a) For any retailer who satisfies the provisions of subparagraph
15 (G)(i), such retailer shall not be required to collect and remit any taxes
16 from sales occurring prior to July 1, 2019.

17 (b) For any retailer who satisfies the provisions of subparagraph (G)
18 (i)(c) for sales in the current calendar year for the first time, such retailer
19 shall be required to collect and remit the tax on any sales in excess of the
20 \$100,000 of cumulative gross receipts from sales in the current calendar
21 year by the retailer to customers in this state.

22 (2) A retailer shall be presumed to be doing business in this state if
23 any of the following occur:

24 (A) Any person, other than a common carrier acting in its capacity as
25 such, that has nexus with the state sufficient to require such person to
26 collect and remit taxes under the provisions of the constitution and laws of
27 the United States if such person were making taxable retail sales of
28 tangible personal property or services in this state:

29 (i) Sells the same or a substantially similar line of products as the
30 retailer and does so under the same or a substantially similar business
31 name;

32 (ii) maintains a distribution house, sales house, warehouse or similar
33 place of business in Kansas that delivers or facilitates the sale or delivery
34 of property sold by the retailer to consumers;

35 (iii) uses trademarks, service marks, or trade names in the state that
36 are the same or substantially similar to those used by the retailer;

37 (iv) delivers, installs, assembles or performs maintenance services for
38 the retailer's customers within the state;

39 (v) facilitates the retailer's delivery of property to customers in the
40 state by allowing the retailer's customers to pick up property sold by the
41 retailer at an office, distribution facility, warehouse, storage place or
42 similar place of business maintained by the person in the state;

43 (vi) has a franchisee or licensee operating under its trade name if the

1 franchisee or the licensee is required to collect the tax under the Kansas
2 retailers' sales tax act; or

3 (vii) conducts any other activities in the state that are significantly
4 associated with the retailer's ability to establish and maintain a market in
5 the state for the retailer's sales.

6 (B) Any affiliated person conducting activities in this state described
7 in subparagraph (A) or ~~(C)~~ (D) has nexus with this state sufficient to
8 require such person to collect and remit taxes under the provisions of the
9 constitution and laws of the United States if such person were making
10 taxable retail sales of tangible personal property or services in this state.

11 (C) *For any retailer who, subject to the provisions set forth in*
12 *subsection (h)(1)(G) for a retailer doing business in this state, has in*
13 *excess of \$100,000 of cumulative gross receipts from sales by the retailer*
14 *to customers in this state, such retailer shall have nexus with this state*
15 *sufficient to require such retailer to collect and remit taxes under the*
16 *provisions of the constitution and laws of the United States if such retailer*
17 *were making taxable retail sales of tangible personal property in this state.*

18 ~~(C)~~(D) The retailer enters into an agreement with one or more
19 residents of this state under which the resident, for a commission or other
20 consideration, directly or indirectly refers potential customers, whether by
21 a link or an internet website, by telemarketing, by an in-person oral
22 presentation, or otherwise, to the retailer, if the cumulative gross receipts
23 from sales by the retailer to customers in the state who are referred to the
24 retailer by all residents with this type of an agreement with the retailer is in
25 excess of \$10,000 during the preceding 12 months. This presumption may
26 be rebutted by submitting proof that the residents with whom the retailer
27 has an agreement did not engage in any activity within the state that was
28 significantly associated with the retailer's ability to establish or maintain
29 the retailer's market in the state during the preceding 12 months. Such
30 proof may consist of sworn written statements from all of the residents
31 with whom the retailer has an agreement stating that they did not engage in
32 any solicitation in the state on behalf of the retailer during the preceding
33 year, provided that such statements were provided and obtained in good
34 faith. This subparagraph shall take effect 90 days after the enactment of
35 this statute and shall apply to sales made and uses occurring on or after the
36 effective date of this subparagraph and without regard to the date the
37 retailer and the resident entered into the agreement described in this
38 subparagraph. The term "preceding 12 months" as used in this
39 subparagraph includes the 12 months commencing prior to the effective
40 date of this subparagraph.

41 ~~(D)~~(E) The presumptions in subparagraphs (A) and (B) may be
42 rebutted by demonstrating that the activities of the person or affiliated
43 person in the state are not significantly associated with the retailer's ability

1 to establish or maintain a market in this state for the retailer's sales.

2 (3) The processing of orders electronically, by fax, telephone, the
3 internet or other electronic ordering process, does not relieve a retailer of
4 responsibility for collection of the tax from the purchaser if the retailer is
5 doing business in this state pursuant to this section.

6 (i) "Director" means the director of taxation.

7 (j) As used in this section, "affiliated person" means any person that
8 is a member of the same "controlled group of corporations" as defined in
9 section 1563(a) of the federal internal revenue code as the retailer or any
10 other entity that, notwithstanding its form of organization, bears the same
11 ownership relationship to the retailer as a corporation that is a member of
12 the same "controlled group of corporations" as defined in section 1563(a)
13 of the federal internal revenue code.

14 Sec. 13. K.S.A. 2018 Supp. 79-3602, 79-3603 and 79-3702 are
15 hereby repealed.

16 Sec. 14. This act shall take effect and be in force from and after its
17 publication in the statute book.