

SENATE BILL No. 328

By Committee on Assessment and Taxation

1-28

1 AN ACT concerning sales taxation; relating to the tax treatment of
2 discounts and coupons; exclusion from the sales or selling price;
3 amending K.S.A. 79-3602 and repealing the existing section.
4

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

6 Section 1. K.S.A. 79-3602 is hereby amended to read as follows: 79-
7 3602. Except as otherwise provided, as used in the Kansas retailers' sales
8 tax act:

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

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

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

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

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

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

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

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

31 (i) "Delivery charges" means charges by the seller of personal
32 property or services for preparation and delivery to a location designated
33 by the purchaser of personal property or services including, but not limited
34 to, transportation, shipping, postage, handling, crating and packing.
35 Delivery charges shall not include charges for delivery of direct mail if the
36 charges are separately stated on an invoice or similar billing document

1 given to the purchaser.

2 (j) "Direct mail" means printed material delivered or distributed by
3 United States mail or other delivery services to a mass audience or to
4 addressees on a mailing list provided by the purchaser or at the direction of
5 the purchaser when the cost of the items are not billed directly to the
6 recipients. Direct mail includes tangible personal property supplied
7 directly or indirectly by the purchaser to the direct mail seller for inclusion
8 in the package containing the printed material. Direct mail does not
9 include multiple items of printed material delivered to a single address.

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

11 (l) "Educational institution" means any nonprofit school, college and
12 university that offers education at a level above the 12th grade, and
13 conducts regular classes and courses of study required for accreditation by,
14 or membership in, the higher learning commission, the state board of
15 education, or that otherwise qualify as an "educational institution," as
16 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall
17 include: (1) A group of educational institutions that operates exclusively
18 for an educational purpose; (2) nonprofit endowment associations and
19 foundations organized and operated exclusively to receive, hold, invest
20 and administer moneys and property as a permanent fund for the support
21 and sole benefit of an educational institution; (3) nonprofit trusts,
22 foundations and other entities organized and operated principally to hold
23 and own receipts from intercollegiate sporting events and to disburse such
24 receipts, as well as grants and gifts, in the interest of collegiate and
25 intercollegiate athletic programs for the support and sole benefit of an
26 educational institution; and (4) nonprofit trusts, foundations and other
27 entities organized and operated for the primary purpose of encouraging,
28 fostering and conducting scholarly investigations and industrial and other
29 types of research for the support and sole benefit of an educational
30 institution.

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

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

38 (o) "Gross receipts" means the total selling price or the amount
39 received as defined in this act, in money, credits, property or other
40 consideration valued in money from sales at retail within this state; and
41 embraced within the provisions of this act. The taxpayer, may take credit
42 in the report of gross receipts for: (1) An amount equal to the selling price
43 of property returned by the purchaser when the full sale price thereof,

1 including the tax collected, is refunded in cash or by credit; and (2) an
2 amount equal to the allowance given for the trade-in of property.

3 (p) "Ingredient or component part" means tangible personal property
4 ~~which~~ *that* is necessary or essential to, and ~~which~~ *that* is actually used in
5 and becomes an integral and material part of tangible personal property or
6 services produced, manufactured or compounded for sale by the producer,
7 manufacturer or compounder in its regular course of business. The
8 following items of tangible personal property are hereby declared to be
9 ingredients or component parts, but the listing of such property shall not be
10 deemed to be exclusive nor shall such listing be construed to be a
11 restriction upon, or an indication of, the type or types of property to be
12 included within the definition of "ingredient or component part" as herein
13 set forth:

14 (1) Containers, labels and shipping cases used in the distribution of
15 property produced, manufactured or compounded for sale ~~which~~ *that* are
16 not to be returned to the producer, manufacturer or compounder for reuse.

17 (2) Containers, labels, shipping cases, paper bags, drinking straws,
18 paper plates, paper cups, twine and wrapping paper used in the distribution
19 and sale of property taxable under the provisions of this act by wholesalers
20 and retailers and ~~which~~ *that* is not to be returned to such wholesaler or
21 retailer for reuse.

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

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

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

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

33 (q) "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~~ *that* makes a nonrecurring sale
37 of 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~~ *that* has been repossessed by any such entity; and
43 (2) any sale of tangible personal property made by an auctioneer or agent

1 on 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 (r) "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 (s) "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 (t) "Member state" means a state that has entered in the agreement,
37 pursuant to provisions of article VIII of the agreement.

38 (u) "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 (v) "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) "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) "Municipal corporation" means any city incorporated under the
9 laws of Kansas.

10 (y) "Nonprofit blood bank" means any nonprofit place, organization,
11 institution or establishment that is operated wholly or in part for the
12 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 (z) "Persons" means any individual, firm, copartnership, joint
18 adventure, association, corporation, estate or trust, receiver or trustee, or
19 any group or combination acting as a unit, and the plural as well as the
20 singular number; and shall specifically mean any city or other political
21 subdivision of the state of Kansas engaging in a business or providing a
22 service specifically taxable under the provisions of this act.

23 (aa) "Political subdivision" means any municipality, agency or
24 subdivision of the state ~~which~~ that is, or shall hereafter be, authorized to
25 levy taxes upon tangible property within the state or ~~which~~ that certifies a
26 levy to a municipality, agency or subdivision of the state ~~which~~ that is, or
27 shall hereafter be, authorized to levy taxes upon tangible property within
28 the state. Such term also shall include any public building commission,
29 housing, airport, port, metropolitan transit or similar authority established
30 pursuant to law and the horsethief reservoir benefit district established
31 pursuant to K.S.A. 82a-2201, and amendments thereto.

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

35 (cc) "Prewritten computer software" means computer software,
36 including prewritten upgrades, ~~which~~ that is not designed and developed
37 by the author or other creator to the specifications of a specific purchaser.
38 The combining of two or more prewritten computer software programs or
39 prewritten portions thereof does not cause the combination to be other than
40 prewritten computer software. Prewritten computer software includes
41 software designed and developed by the author or other creator to the
42 specifications of a specific purchaser when it is sold to a person other than
43 the purchaser. Where a person modifies or enhances computer software of

1 which the person is not the author or creator, the person shall be deemed to
2 be the author or creator only of such person's modifications or
3 enhancements. Prewritten computer software or a prewritten portion
4 thereof that is modified or enhanced to any degree, where such
5 modification or enhancement is designed and developed to the
6 specifications of a specific purchaser, remains prewritten computer
7 software, except that where there is a reasonable, separately stated charge
8 or an invoice or other statement of the price given to the purchaser for
9 such modification or enhancement, such modification or enhancement
10 shall not constitute prewritten computer software.

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

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

27 (B) electricity, gas and water; and

28 (C) petroleum products, lubricants, chemicals, solvents, reagents and
29 catalysts.

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

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

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

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

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

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

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

15 (ll) (1) "Sales or selling price" applies to the measure subject to sales
16 tax and means the total amount of consideration, including cash, credit,
17 property and services, for which personal property or services are sold,
18 leased or rented, valued in money, whether received in money or
19 otherwise, without any deduction for the following:

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

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

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

26 (D) delivery charges; and

27 (E) installation charges.

28 (2) ~~"Sales or selling price" includes consideration received by the~~
29 ~~seller from third parties if:~~

30 (A) ~~The seller actually receives consideration from a party other than~~
31 ~~the purchaser and the consideration is directly related to a price reduction~~
32 ~~or discount on the sale;~~

33 (B) ~~the seller has an obligation to pass the price reduction or discount~~
34 ~~through to the purchaser;~~

35 (C) ~~the amount of the consideration attributable to the sale is fixed~~
36 ~~and determinable by the seller at the time of the sale of the item to the~~
37 ~~purchaser; and~~

38 (D) ~~one of the following criteria is met:~~

39 (i) ~~The purchaser presents a coupon, certificate or other~~
40 ~~documentation to the seller to claim a price reduction or discount where~~
41 ~~the coupon, certificate or documentation is authorized, distributed or~~
42 ~~granted by a third party with the understanding that the third party will~~
43 ~~reimburse any seller to whom the coupon, certificate or documentation is~~

1 presented;

2 ~~(ii) the purchaser identifies to the seller that the purchaser is a~~
3 ~~member of a group or organization entitled to a price reduction or~~
4 ~~discount. A preferred customer card that is available to any patron does not~~
5 ~~constitute membership in such a group; or~~

6 ~~(iii) the price reduction or discount is identified as a third party price~~
7 ~~reduction or discount on the invoice received by the purchaser or on a~~
8 ~~coupon, certificate or other documentation presented by the purchaser.~~

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

10 (A) Discounts, including cash, term or coupons ~~that are not~~
11 ~~reimbursed by a third party~~ that are allowed by a seller and taken by a
12 purchaser on a sale;

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

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

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

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

25 (mm) "Seller" means a person making sales, leases or rentals of
26 personal property or services.

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

29 (oo) "Sourcing rules" means the rules set forth in K.S.A. 79-3670
30 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments thereto,
31 ~~which~~ *that* shall apply to identify and determine the state and local taxing
32 jurisdiction sales or use taxes to pay, or collect and remit on a particular
33 retail sale.

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

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

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

42 (ss) "Entity-based exemption" means an exemption based on who
43 purchases the product or who sells the product. An exemption that is

1 available to all individuals shall not be considered an entity-based
2 exemption.

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

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

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

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

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

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

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

34 (aaa) "Telecommunications service" means the electronic
35 transmission, conveyance or routing of voice, data, audio, video or any
36 other information or signals to a point, or between or among points. The
37 term telecommunications service includes such transmission, conveyance
38 or routing in which computer processing applications are used to act on the
39 form, code or protocol of the content for purposes of transmissions,
40 conveyance or routing without regard to whether such service is referred to
41 as voice over internet protocol services or is classified by the federal
42 communications commission as enhanced or value added.
43 Telecommunications service does not include:

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

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

8 (3) tangible personal property;

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

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

11 (6) internet access service;

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

19 (8) ancillary services; or

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

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

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

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

40 (eee) "International" means a telecommunications service that
41 originates or terminates in the United States and terminates or originates
42 outside the United States, respectively. United States includes the District
43 of Columbia or a U.S. territory or possession.

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

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

9 (hhh) "Cereal malt beverage" shall have the same meaning as such
10 term is defined in K.S.A. 41-2701, and amendments thereto, except that
11 for the purposes of the Kansas retailers sales tax act and for no other
12 purpose, such term shall include beer containing not more than 6% alcohol
13 by volume when such beer is sold by a retailer licensed under the Kansas
14 cereal malt beverage act.

15 Sec. 2. K.S.A. 79-3602 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its
17 publication in the statute book.