

SENATE BILL No. 397

By Committee on Assessment and Taxation

2-10

1 AN ACT concerning sales taxation; relating to imposition of tax; digital
2 property and subscription services; amending K.S.A. 79-3602 and 79-
3 3603 and repealing the existing sections.

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) *"Ancillary services" means services that are associated with or*
17 *incidental to the provision of telecommunications services, including, but*
18 *not limited to, detailed communications billing, directory assistance,*
19 *vertical service and voice mail services.*

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

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

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

32 ~~(f)~~(h) "Computer" means an electronic device that accepts
33 information in digital or similar form and manipulates it for a result based
34 on a sequence of instructions.

35 ~~(g)~~(i) "Computer software" means a set of coded instructions
36 designed to cause a computer or automatic data processing equipment to

1 perform a task.

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

7 (h)(k) *"Delivered electronically" means delivered to the purchaser by*
8 *means other than tangible storage media.*

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

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

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

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

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

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

43 (A) *A stored monetary value that is deducted from a total as it is used*

1 by the purchaser; or

2 (B) a redeemable card, gift card or gift certificate that entitles the
3 holder to select specific types of digital property.

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

7 (1) Digital audio-visual works;

8 (2) digital audio works;

9 (3) digital books;

10 (4) artwork;

11 (5) digital photographs and pictures;

12 (6) periodicals;

13 (7) newspapers;

14 (8) magazines;

15 (9) video, audio and other greeting cards;

16 (10) graphics;

17 (11) templates;

18 (12) patterns;

19 (13) desktop applications;

20 (14) mobile applications;

21 (15) web applications;

22 (16) cloud-based applications;

23 (17) native applications;

24 (18) online games;

25 (19) video games;

26 (20) electronic games;

27 (21) any digital code related to any of the items listed above; or

28 (22) any streaming services related to any of the items listed above.

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

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

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

40 ~~(t)~~(v) "Educational institution" means any nonprofit school, college
41 and university that offers education at a level above the 12th grade, and
42 conducts regular classes and courses of study required for accreditation by,
43 or membership in, the higher learning commission, the state board of

1 education, or that otherwise qualify as an "educational institution," as
 2 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall
 3 include: (1) A group of educational institutions that operates exclusively
 4 for an educational purpose; (2) nonprofit endowment associations and
 5 foundations organized and operated exclusively to receive, hold, invest
 6 and administer moneys and property as a permanent fund for the support
 7 and sole benefit of an educational institution; (3) nonprofit trusts,
 8 foundations and other entities organized and operated principally to hold
 9 and own receipts from intercollegiate sporting events and to disburse such
 10 receipts, as well as grants and gifts, in the interest of collegiate and
 11 intercollegiate athletic programs for the support and sole benefit of an
 12 educational institution; and (4) nonprofit trusts, foundations and other
 13 entities organized and operated for the primary purpose of encouraging,
 14 fostering and conducting scholarly investigations and industrial and other
 15 types of research for the support and sole benefit of an educational
 16 institution.

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

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

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

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

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

1 restriction upon, or an indication of, the type or types of property to be
2 included within the definition of "ingredient or component part" as herein
3 set forth:

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

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

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

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

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

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

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

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

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

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

1 personal property ~~which~~ *that* has been repossessed by any such entity; and
2 (2) any sale of tangible personal property made by an auctioneer or agent
3 on behalf of not more than two principals or households if such sale is
4 nonrecurring and any such principal or household is not engaged at the
5 time of such sale in the business of selling tangible personal property.

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

10 (1) "Lease or rental" does not include:

11 (A) A transfer of possession or control of property under a security
12 agreement or deferred payment plan that requires the transfer of title upon
13 completion of the required payments;

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

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

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

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

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

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

38 ~~(+)(hh)~~ "Member state" means a state that has entered in the
39 agreement, pursuant to provisions of article VIII of the agreement.

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

43 ~~(+)(jj)~~ "Model 2 seller" means a seller that has selected a CAS to

1 perform part of its sales and use tax functions, but retains responsibility for
2 remitting the tax.

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

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

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

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

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

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

42 ~~(bb)~~(qq) "Prescription" means an order, formula or recipe issued in
43 any form of oral, written, electronic or other means of transmission by a

1 duly licensed practitioner authorized by the laws of this state.

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

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

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

37 (B) electricity, gas and water; and

38 (C) petroleum products, lubricants, chemicals, solvents, reagents and
39 catalysts.

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

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

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

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

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

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

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

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

30 (A) The seller's cost of the property sold;
31 (B) the cost of materials used, labor or service cost, interest, losses,
32 all costs of transportation to the seller, all taxes imposed on the seller and
33 any other expense of the seller;

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

36 (D) delivery charges; and

37 (E) installation charges.

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

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

43 (B) the seller has an obligation to pass the price reduction or discount

1 through to the purchaser;

2 (C) the amount of the consideration attributable to the sale is fixed
3 and determinable by the seller at the time of the sale of the item to the
4 purchaser; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(pp)~~(eee) "Tangible personal property" means personal property that
 2 can be seen, weighed, measured, felt or touched, or that is in any other
 3 manner perceptible to the senses. Tangible personal property includes
 4 electricity, water, gas, steam and prewritten computer software.

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

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

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

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

24 (3) *tangible personal property;*

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

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

27 (6) *internet access service;*

28 (7) *radio and television audio and video programming services,*
 29 *regardless of the medium, including the furnishing of transmission,*
 30 *conveyance and routing of such services by the programming service*
 31 *provider. Radio and television audio and video programming services*
 32 *shall include, but not be limited to, cable service as defined in 47 U.S.C. §*
 33 *522(6) and audio and video programming services delivered by*
 34 *commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;*

35 (8) *ancillary services; or*

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

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

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

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

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

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

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

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

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

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

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

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

1 as voice over internet protocol services or is classified by the federal
 2 communications commission as enhanced or value added.
 3 Telecommunications service does not include:

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

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

11 (3) tangible personal property;

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

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

14 (6) internet access service;

15 (7) radio and television audio and video programming services,
 16 regardless of the medium, including the furnishing of transmission,
 17 conveyance and routing of such services by the programming service
 18 provider. Radio and television audio and video programming services shall
 19 include, but not be limited to, cable service as defined in 47 U.S.C. §
 20 522(6) and audio and video programming services delivered by
 21 commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

22 (8) ancillary services; or

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

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

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

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

43 (eee) "International" means a telecommunications service that

1 originates or terminates in the United States and terminates or originates
2 outside the United States, respectively. United States includes the District
3 of Columbia or a U.S. territory or possession.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (j) the gross receipts from the rendering of the services of washing

1 and washing and waxing of vehicles;

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

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

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

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

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

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

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

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

42 For the purposes of this subsection:

43 (1) "Original construction" shall mean the first or initial construction

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

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

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

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

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

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

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

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

40 (s) on and after January 1, 2005, the gross receipts received from the
41 sale of prewritten computer software and the sale of the services of
42 modifying, altering, updating or maintaining prewritten computer
43 software, whether the prewritten computer software is installed or

1 delivered electronically by tangible storage media physically transferred to
2 the purchaser or by load and leave;

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

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

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

10 (w) all sales of charitable raffle tickets in accordance with K.S.A. 75-
11 5171 et seq., and amendments thereto, shall be exempt from taxes imposed
12 pursuant to this section; *and*

13 *(x) all sales of digital property, and subscription services thereto,*
14 *regardless of whether: (1) The purchaser has the right to permanently use*
15 *the property; (2) the purchaser's right to access or retain the property is*
16 *not permanent; or (3) the purchaser's right of use is conditioned upon*
17 *continued payment.*

18 Sec. 3. K.S.A. 79-3602 and 79-3603 are hereby repealed.

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