

2021 Kansas Statutes

79-3702. **Definitions.** For the purposes of this act: (a) "Purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. "Purchase price" includes, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale, such cash discount shall be deducted in arriving at the purchase price.

(b) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as is practicable, shall be applicable herein unless otherwise provided. The provisions of K.S.A. 79-3601 through 79-3625, 79-3650, 79-3693 and 79-3694, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of this act.

(c) "Use" means the exercise within this state by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of the property in the regular course of business, and except storage as hereinafter defined.

(d) "Storage" means any keeping or retaining in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(e) "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

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

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

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

(B) any retailer utilizing an employee, independent contractor, agent, representative, salesperson, canvasser, solicitor or other person operating in this state either permanently or temporarily, for the purpose of selling, delivering, installing, assembling, servicing,

- repairing, soliciting sales or the taking of orders for tangible personal property;
- (C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603, and amendments thereto, and who is required to secure a retailer's sales tax registration certificate before performing those services;
- (D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;
- (E) any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business;
- (F) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States; and
- (G) (i) for any retailer that does not satisfy any of the requirements contained in subparagraphs (A) through (F), such retailer shall be a retailer doing business in this state, if:
- (a) For the period beginning on January 1, 2021, through June 30, 2021, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state; or
- (b) during the current or immediately preceding calendar year, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state.
- (ii) (a) For any retailer who satisfies the provisions of subparagraph (G)(i), such retailer shall not be required to collect and remit any taxes from sales occurring prior to July 1, 2021.
- (b) For any retailer who satisfies the provisions of subparagraph (G)(i)(b) for sales in the current calendar year for the first time, such retailer shall be required to collect and remit the tax on any sales in excess of \$100,000 of cumulative gross receipts from sales in the current calendar year by the retailer to customers in this state.
- (2) A retailer shall be presumed to be doing business in this state if any person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state and such person:
- (A) Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;
- (B) maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;
- (C) uses trademarks, service marks or trade names in the state that are the same or substantially similar to those used by the retailer;
- (D) delivers, installs, assembles or performs maintenance services for the retailer's customers within the state;
- (E) facilitates the retailer's delivery of property to customers in the state by allowing the retailer's customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;
- (F) has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act; or
- (G) conducts any other activities in the state that are significantly associated with the retailer's ability to establish and maintain a market in the state for the retailer's sales.
- (3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process does not relieve a retailer of responsibility for collection of the

tax from the purchaser if the retailer is doing business in this state pursuant to this section.

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

History: L. 1937, ch. 375, § 2; L. 1945, ch. 370, § 1; L. 1957, ch. 511, § 1; L. 1965, ch. 535, § 1; L. 1990, ch. 357, § 1; L. 2003, ch. 159, § 2; L. 2007, ch. 155, § 14; L. 2013, ch. 87, § 18; L. 2021, ch. 93, § 14; July 1.