

2
3 As Amended by House Committee

4 *Session of 2002*

5
6 **HOUSE BILL No. 2089**

7
8 By Committee on Taxation

9
10 1-22

11
12 AN ACT relating to sales taxation, concerning treatment of automobile
13 manufacturer cash rebates, amending K.S.A. 2000 ~~2001~~ Supp. 79-
14 3602 and repealing the existing section.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. ~~K.S.A. 2000 2001~~ Supp. 79-3602 is hereby amended to
18 read as follows: 79-3602. (a) "Persons" means any individual, firm, co-
19 partnership, joint adventure, association, corporation, estate or trust, re-
20 ceiver or trustee, or any group or combination acting as a unit, and the
21 plural as well as the singular number, and shall specifically mean any city
22 or other political subdivision of the state of Kansas engaging in a business
23 or providing a service specifically taxable under the provisions of this act.

24 — (b) "Director" means the state director of taxation.

25 — (c) "Sale" or "sales" means the exchange of tangible personal prop-
26 erty, as well as the sale thereof for money, and every transaction, condi-
27 tional or otherwise, for a consideration, constituting a sale, including the
28 sale or furnishing of electrical energy, gas, water, services or entertain-
29 ment taxable under the terms of this act and including, except as provided
30 in the following provision, the sale of the use of tangible personal property
31 by way of a lease, license to use or the rental thereof regardless of the
32 method by which the title, possession or right to use the tangible personal
33 property is transferred. The term "sale" or "sales" shall not mean the sale
34 of the use of any tangible personal property used as a dwelling by way of
35 a lease or rental thereof for a term of more than 28 consecutive days.

36 — (d) "Retailer" means a person regularly engaged in the business of
37 selling tangible personal property at retail or furnishing electrical energy,
38 gas, water, services or entertainment, and selling only to the user or con-
39 sumer and not for resale.

40 — (e) "Retail sale" or "sale at retail" means all sales made within the
41 state of tangible personal property or electrical energy, gas, water, services
42 or entertainment for use or consumption and not for resale.

43 — (f) "Tangible personal property" means corporeal personal property.

1 Such term shall include: (1) Any computer software program which is not
2 a custom computer software program, as described by subsection (s) of
3 K.S.A. 79-3603, and amendments thereto; and (2) any prepaid telephone
4 calling card or prepaid authorization number, or recharge of such card
5 or number, as described by subsection (b) of K.S.A. 79-3603, and amend-
6 ments thereto.

7 —(g)—“Selling price” means the total cost to the consumer exclusive of
8 discounts allowed and credited, but including freight and transportation
9 charges from retailer to consumer. *For purposes of this subsection, dis-*
10 *counts shall include cash rebates granted by a manufacturer to a pur-*
11 *chaser or lessee of a new motor vehicle if paid directly to the retailer as*
12 *a result of the original sale.*

13 —(h)—“Gross receipts” means the total selling price or the amount re-
14 ceived as defined in this act, in money, credits, property or other consid-
15 eration valued in money from sales at retail within this state; and em-
16 braced within the provisions of this act. The taxpayer, may take credit in
17 the report of gross receipts for: (1) An amount equal to the selling price
18 of property returned by the purchaser when the full sale price thereof,
19 including the tax collected, is refunded in cash or by credit, and (2) an
20 amount equal to the allowance given for the trade-in of property.

21 —(i)—“Taxpayer” means any person obligated to account to the director
22 for taxes collected under the terms of this act.

23 —(j)—“Isolated or occasional sale” means the nonrecurring sale of tan-
24 gible personal property, or services taxable hereunder by a person not
25 engaged at the time of such sale in the business of selling such property
26 or services. Any religious organization which makes a nonrecurring sale
27 of tangible personal property acquired for the purpose of resale shall be
28 deemed to be not engaged at the time of such sale in the business of
29 selling such property. Such term shall include: (1) Any sale by a bank,
30 savings and loan institution, credit union or any finance company licensed
31 under the provisions of the Kansas uniform consumer credit code of tan-
32 gible personal property which has been repossessed by any such entity;
33 and (2) any sale of tangible personal property made by an auctioneer or
34 agent on behalf of not more than two principals or households if such
35 sale is nonrecurring and any such principal or household is not engaged
36 at the time of such sale in the business of selling tangible personal
37 property.

38 —(k)—“Service” means those services described in and taxed under the
39 provisions of K.S.A. 79-3603 and amendments thereto.

40 —(l)—“Ingredient or component part” means tangible personal property
41 which is necessary or essential to, and which is actually used in and be-
42 comes an integral and material part of tangible personal property or serv-
43 ices produced, manufactured or compounded for sale by the producer,

1 manufacturer or compounder in its regular course of business. The fol-
2 lowing items of tangible personal property are hereby declared to be
3 ingredients or component parts, but the listing of such property shall not
4 be deemed to be exclusive nor shall such listing be construed to be a
5 restriction upon, or an indication of, the type or types of property to be
6 included within the definition of “ingredient or component part” as
7 herein set forth:

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

11 —(2) Containers, labels, shipping cases, paper bags, drinking straws,
12 paper plates, paper cups, twine and wrapping paper used in the distri-
13 bution and sale of property taxable under the provisions of this act by
14 wholesalers and retailers and which is not to be returned to such whole-
15 saler or retailer for reuse.

16 —(3) Seeds and seedlings for the production of plants and plant prod-
17 ucts produced for resale.

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

19 —(5) Fertilizer used in the production of plants and plant products
20 produced for resale.

21 —(6) Feed for animals, fowl and aquatic plants and animals, the primary
22 purpose of which is use in agriculture or aquaculture, as defined in K.S.A.
23 47-1901, and amendments thereto, the production of food for human
24 consumption, the production of animal, dairy, poultry or aquatic plant
25 and animal products, fiber, fur, or the production of offspring for use for
26 any such purpose or purposes.

27 —(m) “Property which is consumed” means tangible personal property
28 which is essential or necessary to and which is used in the actual process
29 of and consumed, depleted or dissipated within one year in (1) the pro-
30 duction, manufacture, processing, mining, drilling, refining or compound-
31 ing of tangible personal property, (2) the providing of services, (3) the
32 irrigation of crops, for sale in the regular course of business, or (4) the
33 storage or processing of grain by a public grain warehouse or other grain
34 storage facility, and which is not reusable for such purpose. The following
35 is a listing of tangible personal property, included by way of illustration
36 but not of limitation, which qualifies as property which is consumed:

37 —(A) Insecticides, herbicides, germicides, pesticides, fungicides, fu-
38 migants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals
39 for use in commercial or agricultural production, processing or storage of
40 fruit, vegetables, feeds, seeds, grains, animals or animal products whether
41 fed, injected, applied, combined with or otherwise used;

42 —(B) electricity, gas and water; and

43 —(C) petroleum products, lubricants, chemicals, solvents, reagents and

1 catalysts.

2 —(n)—“Political subdivision” means any municipality, agency or subdivi-
3 sion of the state which is, or shall hereafter be, authorized to levy taxes
4 upon tangible property within the state or which certifies a levy to a
5 municipality, agency or subdivision of the state which is, or shall hereafter
6 be, authorized to levy taxes upon tangible property within the state. Such
7 term also shall include any public building commission, housing, airport,
8 port, metropolitan transit or similar authority established pursuant to law.

9 —(o)—“Municipal corporation” means any city incorporated under the
10 laws of Kansas.

11 —(p)—“Quasi-municipal corporation” means any county, township,
12 school district, drainage district or any other governmental subdivision in
13 the state of Kansas having authority to receive or hold moneys or funds.

14 —(q)—“Nonprofit blood bank” means any nonprofit place, organization,
15 institution or establishment that is operated wholly or in part for the
16 purpose of obtaining, storing, processing, preparing for transfusing, fur-
17 nishing, donating or distributing human blood or parts or fractions of
18 single blood units or products derived from single blood units, whether
19 or not any remuneration is paid therefor, or whether such procedures are
20 done for direct therapeutic use or for storage for future use of such
21 products.

22 —(r)—“Educational institution” means any nonprofit school, college and
23 university that offers education at a level above the twelfth grade, and
24 conducts regular classes and courses of study required for accreditation
25 by, or membership in, the North Central Association of Colleges and
26 Schools, the state board of education, or that otherwise qualify as an
27 “educational institution,” as defined by K.S.A. 74-50,103, and amend-
28 ments thereto. Such phrase shall include: (1) A group of educational in-
29 stitutions that operates exclusively for an educational purpose; (2) non-
30 profit endowment associations and foundations organized and operated
31 exclusively to receive, hold, invest and administer moneys and property
32 as a permanent fund for the support and sole benefit of an educational
33 institution; (3) nonprofit trusts, foundations and other entities organized
34 and operated principally to hold and own receipts from intercollegiate
35 sporting events and to disburse such receipts, as well as grants and gifts,
36 in the interest of collegiate and intercollegiate athletic programs for the
37 support and sole benefit of an educational institution; and (4) nonprofit
38 trusts, foundations and other entities organized and operated for the pri-
39 mary purpose of encouraging, fostering and conducting scholarly inves-
40 tigations and industrial and other types of research for the support and
41 sole benefit of an educational institution.

42 —Sec. 2.—K.S.A. 2000 ~~2001~~ Supp. 79-3602 is hereby repealed.

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1 ~~—Sec. 3.—This act shall take effect and be in force from and after its~~
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