

## HOUSE BILL No. 3039

By Committee on Taxation

4-9

---

AN ACT relating to sales taxation; increasing the rate thereof; amending K.S.A. 2001 Supp. 79-3603, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 79-3603b.

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

Section 1. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of ~~4.9%~~ 5.25% on and after June 1, 2002, and before June 1, 2003, and 5% on and after June 1, 2003, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

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

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser

1 to exclusive or priority use of a communications channel or group of  
2 channels between exchanges; (C) any value-added nonvoice service in  
3 which computer processing applications are used to act on the form, con-  
4 tent, code or protocol of the information to be transmitted; (D) any tel-  
5 ecommunication service to a provider of telecommunication services  
6 which will be used to render telecommunications services, including car-  
7 rier access services; or (E) any service or transaction defined in this sec-  
8 tion among entities classified as members of an affiliated group as pro-  
9 vided by section 1504 of the federal internal revenue code of 1986, as in  
10 effect on January 1, 2001. For the purposes of this subsection the term  
11 gross receipts does not include purchases of telephone, telegraph or tel-  
12 ecommunications using a prepaid telephone calling card or prepaid au-  
13 thorization number. As used in this subsection, a prepaid telephone call-  
14 ing card or prepaid authorization number means the right to exclusively  
15 make telephone calls, paid for in advance, with the prepaid value meas-  
16 ured in minutes or other time units, that enables the origination of calls  
17 using an access number or authorization code or both, whether manually  
18 or electronically dialed; and (3) the gross receipts from the provision of  
19 services taxable under this subsection which are billed on a combined  
20 basis with nontaxable services, shall be accounted for and the tax remitted  
21 as follows: The taxable portion of the selling price of those combined  
22 services shall include only those charges for taxable services if the selling  
23 price for the taxable services can be readily distinguishable in the retailer's  
24 books and records from the selling price for the nontaxable services. Oth-  
25 erwise, the gross receipts from the sale of both taxable and nontaxable  
26 services billed on a combined basis shall be deemed attributable to the  
27 taxable services included therein. Within 90 days of billing taxable services  
28 on a combined basis with nontaxable services, the retailer shall enter into  
29 a written agreement with the secretary identifying the methodology to be  
30 used in determining the taxable portion of the selling price of those com-  
31 bined services. The burden of proving that any receipt or charge is not  
32 taxable shall be upon the retailer. Upon request from the customer, the  
33 retailer shall disclose to the customer the selling price for the taxable  
34 services included in the selling price for the taxable and nontaxable serv-  
35 ices billed on a combined basis;

36 (c) the gross receipts from the sale or furnishing of gas, water, elec-  
37 tricity and heat, which sale is not otherwise exempt from taxation under  
38 the provisions of this act, and whether furnished by municipally or pri-  
39 vately owned utilities but such tax shall not be levied and collected upon  
40 the gross receipts from: (1) The sale of a rural water district benefit unit;  
41 (2) a water system impact fee, system enhancement fee or similar fee  
42 collected by a water supplier as a condition for establishing service; or (3)  
43 connection or reconnection fees collected by a water supplier;

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

5 (e) the gross receipts from the sale of admissions to any place pro-  
6 viding amusement, entertainment or recreation services including admis-  
7 sions to state, county, district and local fairs, but such tax shall not be  
8 levied and collected upon the gross receipts received from sales of ad-  
9 missions to any cultural and historical event which occurs triennially;

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

13 (g) the gross receipts from the service of renting of rooms by hotels,  
14 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-  
15 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto;

16 (h) the gross receipts from the service of renting or leasing of tangible  
17 personal property except such tax shall not apply to the renting or leasing  
18 of machinery, equipment or other personal property owned by a city and  
19 purchased from the proceeds of industrial revenue bonds issued prior to  
20 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through  
21 12-1749, and amendments thereto, and any city or lessee renting or leas-  
22 ing such machinery, equipment or other personal property purchased  
23 with the proceeds of such bonds who shall have paid a tax under the  
24 provisions of this section upon sales made prior to July 1, 1973, shall be  
25 entitled to a refund from the sales tax refund fund of all taxes paid  
26 thereon;

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

30 (j) the gross receipts from the rendering of the services of washing  
31 and washing and waxing of vehicles;

32 (k) the gross receipts from cable, community antennae and other sub-  
33 scriber radio and television services;

34 (l) (1) except as otherwise provided by paragraph (2), the gross re-  
35 cepts received from the sales of tangible personal property to all con-  
36 tractors, subcontractors or repairmen for use by them in erecting struc-  
37 tures, or building on, or otherwise improving, altering, or repairing real  
38 or personal property.

39 (2) Any such contractor, subcontractor or repairman who maintains  
40 an inventory of such property both for sale at retail and for use by them  
41 for the purposes described by paragraph (1) shall be deemed a retailer  
42 with respect to purchases for and sales from such inventory, except that  
43 the gross receipts received from any such sale, other than a sale at retail,

1 shall be equal to the total purchase price paid for such property and the  
2 tax imposed thereon shall be paid by the deemed retailer;

3 (m) the gross receipts received from fees and charges by public and  
4 private clubs, drinking establishments, organizations and businesses for  
5 participation in sports, games and other recreational activities, but such  
6 tax shall not be levied and collected upon the gross receipts received from:

7 (1) Fees and charges by any political subdivision, by any organization  
8 exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-  
9 201, and amendments thereto, or by any youth recreation organization  
10 exclusively providing services to persons 18 years of age or younger which  
11 is exempt from federal income taxation pursuant to section 501(c)(3) of  
12 the federal internal revenue code of 1986, for participation in sports,  
13 games and other recreational activities; and (2) entry fees and charges for  
14 participation in a special event or tournament sanctioned by a national  
15 sporting association to which spectators are charged an admission which  
16 is taxable pursuant to subsection (e);

17 (n) the gross receipts received from dues charged by public and pri-  
18 vate clubs, drinking establishments, organizations and businesses, pay-  
19 ment of which entitles a member to the use of facilities for recreation or  
20 entertainment, but such tax shall not be levied and collected upon the  
21 gross receipts received from: (1) Dues charged by any organization ex-  
22 empt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of  
23 K.S.A. 79-201, and amendments thereto; and (2) sales of memberships  
24 in a nonprofit organization which is exempt from federal income taxation  
25 pursuant to section 501 (c)(3) of the federal internal revenue code of  
26 1986, and whose purpose is to support the operation of a nonprofit zoo;

27 (o) the gross receipts received from the isolated or occasional sale of  
28 motor vehicles or trailers but not including: (1) The transfer of motor  
29 vehicles or trailers by a person to a corporation or limited liability com-  
30 pany solely in exchange for stock securities or membership interest in  
31 such corporation or limited liability company; or (2) the transfer of motor  
32 vehicles or trailers by one corporation or limited liability company to  
33 another when all of the assets of such corporation or limited liability  
34 company are transferred to such other corporation or limited liability  
35 company; or (3) the sale of motor vehicles or trailers which are subject  
36 to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and  
37 amendments thereto, by an immediate family member to another im-  
38 mediate family member. For the purposes of clause (3), immediate family  
39 member means lineal ascendants or descendants, and their spouses. In  
40 determining the base for computing the tax on such isolated or occasional  
41 sale, the fair market value of any motor vehicle or trailer traded in by the  
42 purchaser to the seller may be deducted from the selling price;

43 (p) the gross receipts received for the service of installing or applying

1 tangible personal property which when installed or applied is not being  
2 held for sale in the regular course of business, and whether or not such  
3 tangible personal property when installed or applied remains tangible  
4 personal property or becomes a part of real estate, except that no tax shall  
5 be imposed upon the service of installing or applying tangible personal  
6 property in connection with the original construction of a building or  
7 facility, the original construction, reconstruction, restoration, remodeling,  
8 renovation, repair or replacement of a residence or the construction, re-  
9 construction, restoration, replacement or repair of a bridge or highway.

10 For the purposes of this subsection:

11 (1) "Original construction" shall mean the first or initial construction  
12 of a new building or facility. The term "original construction" shall include  
13 the addition of an entire room or floor to any existing building or facility,  
14 the completion of any unfinished portion of any existing building or fa-  
15 cility and the restoration, reconstruction or replacement of a building or  
16 facility damaged or destroyed by fire, flood, tornado, lightning, explosion  
17 or earthquake, but such term, except with regard to a residence, shall not  
18 include replacement, remodeling, restoration, renovation or reconstruc-  
19 tion under any other circumstances;

20 (2) "building" shall mean only those enclosures within which individ-  
21 uals customarily are employed, or which are customarily used to house  
22 machinery, equipment or other property, and including the land improve-  
23 ments immediately surrounding such building;

24 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water  
25 well, feedlot or any conveyance, transmission or distribution line of any  
26 cooperative, nonprofit, membership corporation organized under or sub-  
27 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,  
28 or of any municipal or quasi-municipal corporation, including the land  
29 improvements immediately surrounding such facility; and

30 (4) "residence" shall mean only those enclosures within which indi-  
31 viduals customarily live;

32 (q) the gross receipts received for the service of repairing, servicing,  
33 altering or maintaining tangible personal property, except computer soft-  
34 ware described in subsection (s), which when such services are rendered  
35 is not being held for sale in the regular course of business, and whether  
36 or not any tangible personal property is transferred in connection there-  
37 with. The tax imposed by this subsection shall be applicable to the services  
38 of repairing, servicing, altering or maintaining an item of tangible personal  
39 property which has been and is fastened to, connected with or built into  
40 real property;

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

1 (s) the gross receipts received from the sale of computer software,  
2 and the sale of the services of modifying, altering, updating or maintaining  
3 computer software. As used in this subsection, "computer software"  
4 means information and directions loaded into a computer which dictate  
5 different functions to be performed by the computer. Computer software  
6 includes any canned or prewritten program which is held or existing for  
7 general or repeated sale, even if the program was originally developed  
8 for a single end user as custom computer software. The sale of computer  
9 software or services does not include: (1) The initial sale of any custom  
10 computer program which is originally developed for the exclusive use of  
11 a single end user; or (2) those services rendered in the modification of  
12 computer software when the modification is developed exclusively for a  
13 single end user only to the extent of the modification and only to the  
14 extent that the actual amount charged for the modification is separately  
15 stated on invoices, statements and other billing documents provided to  
16 the end user. The services of modification, alteration, updating and main-  
17 tenance of computer software shall only include the modification, alter-  
18 ation, updating and maintenance of computer software taxable under this  
19 subsection whether or not the services are actually provided;

20 (t) the gross receipts received for telephone answering services, in-  
21 cluding mobile phone services, beeper services and other similar services;

22 (u) the gross receipts received from the sale of prepaid telephone  
23 calling cards or prepaid authorization numbers and the recharge of such  
24 cards or numbers. A prepaid telephone calling card or prepaid authori-  
25 zation number means the right to exclusively make telephone calls, paid  
26 for in advance, with the prepaid value measured in minutes or other time  
27 units, that enables the origination of calls using an access number or  
28 authorization code or both, whether manually or electronically dialed. If  
29 the sale or recharge of such card or number does not take place at the  
30 vendor's place of business, it shall be conclusively determined to take  
31 place at the customer's shipping address; if there is no item shipped then  
32 it shall be the customer's billing address; and

33 (v) the gross receipts received from the sales of bingo cards, bingo  
34 faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*,  
35 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,  
36 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before  
37 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo  
38 faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*,  
39 and amendments thereto, shall be exempt from taxes imposed pursuant  
40 to this section.

41 Sec. 2. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3703 is  
42 hereby amended to read as follows: 79-3703. There is hereby levied and  
43 there shall be collected from every person in this state a tax or excise for

1 the privilege of using, storing, or consuming within this state any article  
2 of tangible personal property. Such tax shall be levied and collected in an  
3 amount equal to the consideration paid by the taxpayer multiplied by the  
4 rate of ~~4.9%~~ *5.25% on and after June 1, 2002, and before June 1, 2003,*  
5 *and 5% on and after June 1, 2003.* Within a redevelopment district es-  
6 tablished pursuant to K.S.A. 2001 Supp. 74-8921, and amendments  
7 thereto, there is hereby levied and there shall be collected and paid an  
8 additional tax of 2% until the earlier of: (1) The date the bonds issued to  
9 finance or refinance the redevelopment project undertaken in the district  
10 have been paid in full; or (2) the final scheduled maturity of the first  
11 series of bonds issued to finance the redevelopment project. All property  
12 purchased or leased within or without this state and subsequently used,  
13 stored or consumed in this state shall be subject to the compensating tax  
14 if the same property or transaction would have been subject to the Kansas  
15 retailers' sales tax had the transaction been wholly within this state.

16 Sec. 3. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3620 is  
17 hereby amended to read as follows: 79-3620. (a) All revenue collected or  
18 received by the director of taxation from the taxes imposed by this act  
19 shall be remitted to the state treasurer in accordance with the provisions  
20 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
21 remittance, the state treasurer shall deposit the entire amount in the state  
22 treasury, less amounts withheld as provided in subsection (b) and amounts  
23 credited as provided in subsection (c) and (d), to the credit of the state  
24 general fund.

25 (b) A refund fund, designated as "sales tax refund fund" not to exceed  
26 \$100,000 shall be set apart and maintained by the director from sales tax  
27 collections and estimated tax collections and held by the state treasurer  
28 for prompt payment of all sales tax refunds including refunds authorized  
29 under the provisions of K.S.A. 79-3635, and amendments thereto. Such  
30 fund shall be in such amount, within the limit set by this section, as the  
31 director shall determine is necessary to meet current refunding require-  
32 ments under this act. In the event such fund as established by this section  
33 is, at any time, insufficient to provide for the payment of refunds due  
34 claimants thereof, the director shall certify the amount of additional funds  
35 required to the director of accounts and reports who shall promptly trans-  
36 fer the required amount from the state general fund to the sales tax refund  
37 fund, and notify the state treasurer, who shall make proper entry in the  
38 records.

39 (c) (1) The state treasurer shall credit  $\frac{5}{8}$ s of the revenue collected  
40 or received from the tax imposed by K.S.A. 79-3603, and amendments  
41 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),  
42 exclusive of amounts credited pursuant to subsection (d), in the state  
43 highway fund.

1 (2) *The state treasurer shall credit  $\frac{5}{105}$  of the revenue collected or*  
2 *received from the tax imposed by K.S.A. 79-3603, and amendments*  
3 *thereto, at the rate of 5.25%, and deposited as provided by subsection (a),*  
4 *exclusive of amounts credited pursuant to subsection (d), in the state high-*  
5 *way fund.*

6 (3) *The state treasurer shall credit  $\frac{1}{20}$  of the revenue collected and*  
7 *received from the tax imposed by K.S.A. 79-3603, and amendments*  
8 *thereto, at the rate of 5%, and deposited as provided by subsection (a)*  
9 *exclusive of amounts credited pursuant to subsection (d), in the state high-*  
10 *way fund.*

11 (d) The state treasurer shall credit all revenue collected or received  
12 from the tax imposed by K.S.A. 79-3603, and amendments thereto, as  
13 certified by the director, from taxpayers doing business within that por-  
14 tion of a redevelopment district occupied by a redevelopment project that  
15 was determined by the secretary of commerce and housing to be of state-  
16 wide as well as local importance or will create a major tourism area for  
17 the state as defined in K.S.A. 12-1770a, and amendments thereto, to the  
18 city bond finance fund, which fund is hereby created. The provisions of  
19 this subsection shall expire when the total of all amounts credited here-  
20 under and under subsection (d) of K.S.A. 79-3710, and amendments  
21 thereto, is sufficient to retire the special obligation bonds issued for the  
22 purpose of financing all or a portion of the costs of such redevelopment  
23 project.

24 Sec. 4. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3710 is  
25 hereby amended to read as follows: 79-3710. (a) All revenue collected or  
26 received by the director under the provisions of this act shall be remitted  
27 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
28 and amendments thereto. Upon receipt of each such remittance, the state  
29 treasurer shall deposit the entire amount in the state treasury, less  
30 amounts set apart as provided in subsection (b) and amounts credited as  
31 provided in subsection (c) and (d), to the credit of the state general fund.

32 (b) A revolving fund, designated as "compensating tax refund fund"  
33 not to exceed \$10,000 shall be set apart and maintained by the director  
34 from compensating tax collections and estimated tax collections and held  
35 by the state treasurer for prompt payment of all compensating tax refunds.  
36 Such fund shall be in such amount, within the limit set by this section,  
37 as the director shall determine is necessary to meet current refunding  
38 requirements under this act.

39 (c) (1) The state treasurer shall credit  $\frac{5}{98}$  of the revenue collected  
40 or received from the tax imposed by K.S.A. 79-3703, and amendments  
41 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),  
42 exclusive of amounts credited pursuant to subsection (d), in the state  
43 highway fund.



1     (2) *The state treasurer shall credit  $\frac{5}{105}$  of the revenue collected or*  
2 *received from the tax imposed by K.S.A. 79-3703, and amendments*  
3 *thereto, at the rate of 5.25%, and deposited as provided by subsection (a),*  
4 *exclusive of amounts credited pursuant to subsection (d), in the state high-*  
5 *way fund.*

6     (3) *The state treasurer shall credit  $\frac{1}{20}$  of the revenue collected or*  
7 *received from the tax imposed by K.S.A. 79-3703, and amendments*  
8 *thereto, at the rate of 5%, and deposited as provided by subsection (a),*  
9 *exclusive of amounts credited pursuant to subsection (d), in the state high-*  
10 *way fund.*

11     (d) The state treasurer shall credit all revenue collected or received  
12 from the tax imposed by K.S.A. 79-3703, and amendments thereto, as  
13 certified by the director, from taxpayers doing business within that por-  
14 tion of a redevelopment district occupied by a redevelopment project that  
15 was determined by the secretary of commerce and housing to be of state-  
16 wide as well as local importance or will create a major tourism area for  
17 the state as defined in K.S.A. 12-1770a, and amendments thereto, to the  
18 city bond finance fund created by subsection (d) of K.S.A. 79-3620, and  
19 amendments thereto. The provisions of this subsection shall expire when  
20 the total of all amounts credited hereunder and under subsection (d) of  
21 K.S.A. 79-3620, and amendments thereto, is sufficient to retire the special  
22 obligation bonds issued for the purpose of financing all or a portion of  
23 the costs of such redevelopment project.

24     Sec. 5. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3603, 79-  
25 3603b, 79-3620, 79-3703 and 79-3710 are hereby repealed.

26     Sec. 6. This act shall take effect and be in force from and after its  
27 publication in the Kansas register.

28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43