

HOUSE BILL No. 2432

By Committee on Taxation

3-11

AN ACT concerning sales taxation; providing for exemption related to school-related programs and activities; amending K.S.A. 2002 Supp. 79-3606 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages *as defined by K.S.A. 41-2701 and amendments thereto*, and malt products as defined by K.S.A. ~~79-3817~~ 41-501 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, and drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by

1 a public or private elementary or secondary school or public or private
2 nonprofit educational institution and used primarily by such school or
3 institution for nonsectarian programs and activities provided or sponsored
4 by such school or institution or in the erection, repair or enlargement of
5 buildings to be used for such purposes. The exemption herein provided
6 shall not apply to erection, construction, repair, enlargement or equip-
7 ment of buildings used primarily for human habitation;

8 (d) all sales of tangible personal property or services purchased by a
9 contractor for the purpose of constructing, equipping, reconstructing,
10 maintaining, repairing, enlarging, furnishing or remodeling facilities for
11 any public or private nonprofit hospital or public hospital authority, public
12 or private elementary or secondary school or a public or private nonprofit
13 educational institution, which would be exempt from taxation under the
14 provisions of this act if purchased directly by such hospital or public hos-
15 pital authority, school or educational institution; and all sales of tangible
16 personal property or services purchased by a contractor for the purpose
17 of constructing, equipping, reconstructing, maintaining, repairing, en-
18 larging, furnishing or remodeling facilities for any political subdivision of
19 the state or district described in subsection (s), the total cost of which is
20 paid from funds of such political subdivision or district and which would
21 be exempt from taxation under the provisions of this act if purchased
22 directly by such political subdivision or district. Nothing in this subsection
23 or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be
24 deemed to exempt the purchase of any construction machinery, equip-
25 ment or tools used in the constructing, equipping, reconstructing, main-
26 taining, repairing, enlarging, furnishing or remodeling facilities for any
27 political subdivision of the state or any such district. As used in this sub-
28 section, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds
29 of a political subdivision" shall mean general tax revenues, the proceeds
30 of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used
31 for the purpose of constructing, equipping, reconstructing, repairing, en-
32 larging, furnishing or remodeling facilities which are to be leased to the
33 donor. When any political subdivision of the state, district described in
34 subsection (s), public or private nonprofit hospital or public hospital au-
35 thority, public or private elementary or secondary school or public or
36 private nonprofit educational institution shall contract for the purpose of
37 constructing, equipping, reconstructing, maintaining, repairing, enlarg-
38 ing, furnishing or remodeling facilities, it shall obtain from the state and
39 furnish to the contractor an exemption certificate for the project involved,
40 and the contractor may purchase materials for incorporation in such pro-
41 ject. The contractor shall furnish the number of such certificate to all
42 suppliers from whom such purchases are made, and such suppliers shall
43 execute invoices covering the same bearing the number of such certifi-

1 cate. Upon completion of the project the contractor shall furnish to the
2 political subdivision, district described in subsection (s), hospital or public
3 hospital authority, school or educational institution concerned a sworn
4 statement, on a form to be provided by the director of taxation, that all
5 purchases so made were entitled to exemption under this subsection. As
6 an alternative to the foregoing procedure, any such contracting entity may
7 apply to the secretary of revenue for agent status for the sole purpose of
8 issuing and furnishing project exemption certificates to contractors pur-
9 suant to rules and regulations adopted by the secretary establishing con-
10 ditions and standards for the granting and maintaining of such status. All
11 invoices shall be held by the contractor for a period of five years and shall
12 be subject to audit by the director of taxation. If any materials purchased
13 under such a certificate are found not to have been incorporated in the
14 building or other project or not to have been returned for credit or the
15 sales or compensating tax otherwise imposed upon such materials which
16 will not be so incorporated in the building or other project reported and
17 paid by such contractor to the director of taxation not later than the 20th
18 day of the month following the close of the month in which it shall be
19 determined that such materials will not be used for the purpose for which
20 such certificate was issued, the political subdivision, district described in
21 subsection (s), hospital or public hospital authority, school or educational
22 institution concerned shall be liable for tax on all materials purchased for
23 the project, and upon payment thereof it may recover the same from the
24 contractor together with reasonable attorney fees. Any contractor or any
25 agent, employee or subcontractor thereof, who shall use or otherwise
26 dispose of any materials purchased under such a certificate for any pur-
27 pose other than that for which such a certificate is issued without the
28 payment of the sales or compensating tax otherwise imposed upon such
29 materials, shall be guilty of a misdemeanor and, upon conviction therefor,
30 shall be subject to the penalties provided for in subsection (g) of K.S.A.
31 79-3615, and amendments thereto;

32 (e) all sales of tangible personal property or services purchased by a
33 contractor for the erection, repair or enlargement of buildings or other
34 projects for the government of the United States, its agencies or instru-
35 mentalities, which would be exempt from taxation if purchased directly
36 by the government of the United States, its agencies or instrumentalities.
37 When the government of the United States, its agencies or instrumen-
38 talities shall contract for the erection, repair, or enlargement of any build-
39 ing or other project, it shall obtain from the state and furnish to the
40 contractor an exemption certificate for the project involved, and the con-
41 tractor may purchase materials for incorporation in such project. The
42 contractor shall furnish the number of such certificates to all suppliers
43 from whom such purchases are made, and such suppliers shall execute

1 invoices covering the same bearing the number of such certificate. Upon
2 completion of the project the contractor shall furnish to the government
3 of the United States, its agencies or instrumentalities concerned a sworn
4 statement, on a form to be provided by the director of taxation, that all
5 purchases so made were entitled to exemption under this subsection. As
6 an alternative to the foregoing procedure, any such contracting entity may
7 apply to the secretary of revenue for agent status for the sole purpose of
8 issuing and furnishing project exemption certificates to contractors pur-
9 suant to rules and regulations adopted by the secretary establishing con-
10 ditions and standards for the granting and maintaining of such status. All
11 invoices shall be held by the contractor for a period of five years and shall
12 be subject to audit by the director of taxation. Any contractor or any agent,
13 employee or subcontractor thereof, who shall use or otherwise dispose of
14 any materials purchased under such a certificate for any purpose other
15 than that for which such a certificate is issued without the payment of
16 the sales or compensating tax otherwise imposed upon such materials,
17 shall be guilty of a misdemeanor and, upon conviction therefor, shall be
18 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615
19 and amendments thereto;

20 (f) tangible personal property purchased by a railroad or public utility
21 for consumption or movement directly and immediately in interstate
22 commerce;

23 (g) sales of aircraft including remanufactured and modified aircraft,
24 sales of aircraft repair, modification and replacement parts and sales of
25 services employed in the remanufacture, modification and repair of air-
26 craft sold to persons using directly or through an authorized agent such
27 aircraft and aircraft repair, modification and replacement parts as certified
28 or licensed carriers of persons or property in interstate or foreign com-
29 merce under authority of the laws of the United States or any foreign
30 government or sold to any foreign government or agency or instrumen-
31 tality of such foreign government and all sales of aircraft, aircraft parts,
32 replacement parts and services employed in the remanufacture, modifi-
33 cation and repair of aircraft for use outside of the United States;

34 (h) all rentals of nonsectarian textbooks by public or private elemen-
35 tary or secondary schools;

36 (i) the lease or rental of all films, records, tapes, or any type of sound
37 or picture transcriptions used by motion picture exhibitors;

38 (j) meals served without charge or food used in the preparation of
39 such meals to employees of any restaurant, eating house, dining car, hotel,
40 drugstore or other place where meals or drinks are regularly sold to the
41 public if such employees' duties are related to the furnishing or sale of
42 such meals or drinks;

43 (k) any motor vehicle, semitrailer or pole trailer, as such terms are

1 defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and
2 delivered in this state to a bona fide resident of another state, which motor
3 vehicle, semitrailer, pole trailer or aircraft is not to be registered or based
4 in this state and which vehicle, semitrailer, pole trailer or aircraft will not
5 remain in this state more than 10 days;

6 (l) all isolated or occasional sales of tangible personal property, serv-
7 ices, substances or things, except isolated or occasional sale of motor
8 vehicles specifically taxed under the provisions of subsection (o) of K.S.A.
9 79-3603 and amendments thereto;

10 (m) all sales of tangible personal property which become an ingre-
11 dient or component part of tangible personal property or services pro-
12 duced, manufactured or compounded for ultimate sale at retail within or
13 without the state of Kansas; and any such producer, manufacturer or
14 compounder may obtain from the director of taxation and furnish to the
15 supplier an exemption certificate number for tangible personal property
16 for use as an ingredient or component part of the property or services
17 produced, manufactured or compounded;

18 (n) all sales of tangible personal property which is consumed in the
19 production, manufacture, processing, mining, drilling, refining or com-
20 pounding of tangible personal property, the treating of by-products or
21 wastes derived from any such production process, the providing of serv-
22 ices or the irrigation of crops for ultimate sale at retail within or without
23 the state of Kansas; and any purchaser of such property may obtain from
24 the director of taxation and furnish to the supplier an exemption certifi-
25 cate number for tangible personal property for consumption in such pro-
26 duction, manufacture, processing, mining, drilling, refining, compound-
27 ing, treating, irrigation and in providing such services;

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

34 (p) all sales of drugs, as defined by K.S.A. 65-1626 and amendments
35 thereto, dispensed pursuant to a prescription order, as defined by K.S.A.
36 65-1626 and amendments thereto, by a licensed practitioner or a mid-
37 level practitioner as defined by K.S.A. 65-1626, and amendments thereto;

38 (q) all sales of insulin dispensed by a person licensed by the state
39 board of pharmacy to a person for treatment of diabetes at the direction
40 of a person licensed to practice medicine by the board of healing arts;

41 (r) all sales of prosthetic and orthopedic appliances prescribed in
42 writing by a person licensed to practice the healing arts, dentistry or
43 optometry. For the purposes of this subsection, the term prosthetic and

1 orthopedic appliances means any apparatus, instrument, device, or equip-
2 ment used to replace or substitute for any missing part of the body; used
3 to alleviate the malfunction of any part of the body; or used to assist any
4 disabled person in leading a normal life by facilitating such person's mo-
5 bility; such term shall include accessories attached or to be attached to
6 motor vehicles, but such term shall not include motor vehicles or personal
7 property which when installed becomes a fixture to real property;

8 (s) except as provided in K.S.A. 2002 Supp. 82a-2101, and amend-
9 ments thereto, all sales of tangible personal property or services pur-
10 chased directly or indirectly by a groundwater management district or-
11 ganized or operating under the authority of K.S.A. 82a-1020 *et seq.* and
12 amendments thereto, by a rural water district organized or operating un-
13 der the authority of K.S.A. 82a-612, and amendments thereto, or by a
14 water supply district organized or operating under the authority of K.S.A.
15 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto,
16 which property or services are used in the construction activities, opera-
17 tion or maintenance of the district;

18 (t) all sales of farm machinery and equipment or aquaculture ma-
19 chinery and equipment, repair and replacement parts therefor and serv-
20 ices performed in the repair and maintenance of such machinery and
21 equipment. For the purposes of this subsection the term "farm machinery
22 and equipment or aquaculture machinery and equipment" shall include
23 machinery and equipment used in the operation of Christmas tree farm-
24 ing but shall not include any passenger vehicle, truck, truck tractor, trailer,
25 semitrailer or pole trailer, other than a farm trailer, as such terms are
26 defined by K.S.A. 8-126 and amendments thereto. Each purchaser of
27 farm machinery and equipment or aquaculture machinery and equipment
28 exempted herein must certify in writing on the copy of the invoice or
29 sales ticket to be retained by the seller that the farm machinery and
30 equipment or aquaculture machinery and equipment purchased will be
31 used only in farming, ranching or aquaculture production. Farming or
32 ranching shall include the operation of a feedlot and farm and ranch work
33 for hire and the operation of a nursery;

34 (u) all leases or rentals of tangible personal property used as a dwell-
35 ing if such tangible personal property is leased or rented for a period of
36 more than 28 consecutive days;

37 (v) all sales of food products to any contractor for use in preparing
38 meals for delivery to homebound elderly persons over 60 years of age and
39 to homebound disabled persons or to be served at a group-sitting at a
40 location outside of the home to otherwise homebound elderly persons
41 over 60 years of age and to otherwise homebound disabled persons, as
42 all or part of any food service project funded in whole or in part by
43 government or as part of a private nonprofit food service project available

1 to all such elderly or disabled persons residing within an area of service
2 designated by the private nonprofit organization, and all sales of food
3 products for use in preparing meals for consumption by indigent or home-
4 less individuals whether or not such meals are consumed at a place des-
5 ignated for such purpose;

6 (w) all sales of natural gas, electricity, heat and water delivered
7 through mains, lines or pipes: (1) To residential premises for noncom-
8 mercial use by the occupant of such premises; (2) for agricultural use and
9 also, for such use, all sales of propane gas; (3) for use in the severing of
10 oil; and (4) to any property which is exempt from property taxation pur-
11 suant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph,
12 “severing” shall have the meaning ascribed thereto by subsection (k) of
13 K.S.A. 79-4216, and amendments thereto;

14 (x) all sales of propane gas, LP-gas, coal, wood and other fuel sources
15 for the production of heat or lighting for noncommercial use of an oc-
16 cupant of residential premises;

17 (y) all sales of materials and services used in the repairing, servicing,
18 altering, maintaining, manufacturing, remanufacturing, or modification of
19 railroad rolling stock for use in interstate or foreign commerce under
20 authority of the laws of the United States;

21 (z) all sales of tangible personal property and services purchased di-
22 rectly by a port authority or by a contractor therefor as provided by the
23 provisions of K.S.A. 12-3418 and amendments thereto;

24 (aa) all sales of materials and services applied to equipment which is
25 transported into the state from without the state for repair, service, al-
26 teration, maintenance, remanufacture or modification and which is sub-
27 sequently transported outside the state for use in the transmission of
28 liquids or natural gas by means of pipeline in interstate or foreign com-
29 merce under authority of the laws of the United States;

30 (bb) all sales of used mobile homes or manufactured homes. As used
31 in this subsection: (1) “Mobile homes” and “manufactured homes” shall
32 have the meanings ascribed thereto by K.S.A. 58-4202 and amendments
33 thereto; and (2) “sales of used mobile homes or manufactured homes”
34 means sales other than the original retail sale thereof;

35 (cc) all sales of tangible personal property or services purchased for
36 the purpose of and in conjunction with constructing, reconstructing, en-
37 larging or remodeling a business or retail business which meets the
38 requirements established in K.S.A. 74-50,115 and amendments thereto,
39 and the sale and installation of machinery and equipment purchased for
40 installation at any such business or retail business. When a person shall
41 contract for the construction, reconstruction, enlargement or remodeling
42 of any such business or retail business, such person shall obtain from the
43 state and furnish to the contractor an exemption certificate for the project

1 involved, and the contractor may purchase materials, machinery and
2 equipment for incorporation in such project. The contractor shall furnish
3 the number of such certificates to all suppliers from whom such purchases
4 are made, and such suppliers shall execute invoices covering the same
5 bearing the number of such certificate. Upon completion of the project
6 the contractor shall furnish to the owner of the business or retail business
7 a sworn statement, on a form to be provided by the director of taxation,
8 that all purchases so made were entitled to exemption under this subsec-
9 tion. All invoices shall be held by the contractor for a period of five years
10 and shall be subject to audit by the director of taxation. Any contractor
11 or any agent, employee or subcontractor thereof, who shall use or oth-
12 erwise dispose of any materials, machinery or equipment purchased un-
13 der such a certificate for any purpose other than that for which such a
14 certificate is issued without the payment of the sales or compensating tax
15 otherwise imposed thereon, shall be guilty of a misdemeanor and, upon
16 conviction therefor, shall be subject to the penalties provided for in sub-
17 section (g) of K.S.A. 79-3615 and amendments thereto. As used in this
18 subsection, "business" and "retail business" have the meanings respec-
19 tively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

20 (dd) all sales of tangible personal property purchased with food
21 stamps issued by the United States department of agriculture;

22 (ee) all sales of lottery tickets and shares made as part of a lottery
23 operated by the state of Kansas;

24 (ff) on and after July 1, 1988, all sales of new mobile homes or man-
25 ufactured homes to the extent of 40% of the gross receipts, determined
26 without regard to any trade-in allowance, received from such sale. As used
27 in this subsection, "mobile homes" and "manufactured homes" shall have
28 the meanings ascribed thereto by K.S.A. 58-4202 and amendments
29 thereto;

30 (gg) all sales of tangible personal property purchased in accordance
31 with vouchers issued pursuant to the federal special supplemental food
32 program for women, infants and children;

33 (hh) all sales of medical supplies and equipment purchased directly
34 by a nonprofit skilled nursing home or nonprofit intermediate nursing
35 care home, as defined by K.S.A. 39-923, and amendments thereto, for
36 the purpose of providing medical services to residents thereof. This ex-
37 emption shall not apply to tangible personal property customarily used
38 for human habitation purposes;

39 (ii) all sales of tangible personal property purchased directly by a non-
40 profit organization for nonsectarian comprehensive multidiscipline youth
41 development programs and activities provided or sponsored by such or-
42 ganization, and all sales of tangible personal property by or on behalf of
43 any such organization. This exemption shall not apply to tangible personal

1 property customarily used for human habitation purposes;

2 (jj) all sales of tangible personal property or services, including the
3 renting and leasing of tangible personal property, purchased directly on
4 behalf of a community-based mental retardation facility or mental health
5 center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments
6 thereto, and licensed in accordance with the provisions of K.S.A. 75-
7 3307b and amendments thereto. This exemption shall not apply to tan-
8 gible personal property customarily used for human habitation purposes;

9 (kk) (1) (A) all sales of machinery and equipment which are used
10 in this state as an integral or essential part of an integrated production
11 operation by a manufacturing or processing plant or facility;

12 (B) all sales of installation, repair and maintenance services per-
13 formed on such machinery and equipment; and

14 (C) all sales of repair and replacement parts and accessories pur-
15 chased for such machinery and equipment.

16 (2) For purposes of this subsection:

17 (A) “Integrated production operation” means an integrated series of
18 operations engaged in at a manufacturing or processing plant or facility
19 to process, transform or convert tangible personal property by physical,
20 chemical or other means into a different form, composition or character
21 from that in which it originally existed. Integrated production operations
22 shall include: (i) Production line operations, including packaging opera-
23 tions; (ii) preproduction operations to handle, store and treat raw mate-
24 rials; (iii) post production handling, storage, warehousing and distribution
25 operations; and (iv) waste, pollution and environmental control opera-
26 tions, if any;

27 (B) “production line” means the assemblage of machinery and equip-
28 ment at a manufacturing or processing plant or facility where the actual
29 transformation or processing of tangible personal property occurs;

30 (C) “manufacturing or processing plant or facility” means a single,
31 fixed location owned or controlled by a manufacturing or processing busi-
32 ness that consists of one or more structures or buildings in a contiguous
33 area where integrated production operations are conducted to manufac-
34 ture or process tangible personal property to be ultimately sold at retail.
35 Such term shall not include any facility primarily operated for the purpose
36 of conveying or assisting in the conveyance of natural gas, electricity, oil
37 or water. A business may operate one or more manufacturing or proc-
38 essing plants or facilities at different locations to manufacture or process
39 a single product of tangible personal property to be ultimately sold at
40 retail;

41 (D) “manufacturing or processing business” means a business that
42 utilizes an integrated production operation to manufacture, process, fab-
43 ricate, finish, or assemble items for wholesale and retail distribution as

1 part of what is commonly regarded by the general public as an industrial
2 manufacturing or processing operation or an agricultural commodity
3 processing operation. (i) Industrial manufacturing or processing opera-
4 tions include, by way of illustration but not of limitation, the fabrication
5 of automobiles, airplanes, machinery or transportation equipment, the
6 fabrication of metal, plastic, wood, or paper products, electricity power
7 generation, water treatment, petroleum refining, chemical production,
8 wholesale bottling, newspaper printing, ready mixed concrete production,
9 and the remanufacturing of used parts for wholesale or retail sale. Such
10 processing operations shall include operations at an oil well, gas well, mine
11 or other excavation site where the oil, gas, minerals, coal, clay, stone, sand
12 or gravel that has been extracted from the earth is cleaned, separated,
13 crushed, ground, milled, screened, washed, or otherwise treated or pre-
14 pared before its transmission to a refinery or before any other wholesale
15 or retail distribution. (ii) Agricultural commodity processing operations
16 include, by way of illustration but not of limitation, meat packing, poultry
17 slaughtering and dressing, processing and packaging farm and dairy prod-
18 ucts in sealed containers for wholesale and retail distribution, feed grind-
19 ing, grain milling, frozen food processing, and grain handling, cleaning,
20 blending, fumigation, drying and aeration operations engaged in by grain
21 elevators or other grain storage facilities. (iii) Manufacturing or processing
22 businesses do not include, by way of illustration but not of limitation,
23 nonindustrial businesses whose operations are primarily retail and that
24 produce or process tangible personal property as an incidental part of
25 conducting the retail business, such as retailers who bake, cook or prepare
26 food products in the regular course of their retail trade, grocery stores,
27 meat lockers and meat markets that butcher or dress livestock or poultry
28 in the regular course of their retail trade, contractors who alter, service,
29 repair or improve real property, and retail businesses that clean, service
30 or refurbish and repair tangible personal property for its owner;

31 (E) “repair and replacement parts and accessories” means all parts
32 and accessories for exempt machinery and equipment, including, but not
33 limited to, dies, jigs, molds, patterns and safety devices that are attached
34 to exempt machinery or that are otherwise used in production, and parts
35 and accessories that require periodic replacement such as belts, drill bits,
36 grinding wheels, grinding balls, cutting bars, saws, refractory brick and
37 other refractory items for exempt kiln equipment used in production
38 operations;

39 (F) “primary” or “primarily” mean more than 50% of the time.

40 (3) For purposes of this subsection, machinery and equipment shall
41 be deemed to be used as an integral or essential part of an integrated
42 production operation when used:

43 (A) To receive, transport, convey, handle, treat or store raw materials

1 in preparation of its placement on the production line;

2 (B) to transport, convey, handle or store the property undergoing
3 manufacturing or processing at any point from the beginning of the pro-
4 duction line through any warehousing or distribution operation of the
5 final product that occurs at the plant or facility;

6 (C) to act upon, effect, promote or otherwise facilitate a physical
7 change to the property undergoing manufacturing or processing;

8 (D) to guide, control or direct the movement of property undergoing
9 manufacturing or processing;

10 (E) to test or measure raw materials, the property undergoing man-
11 ufacturing or processing or the finished product, as a necessary part of
12 the manufacturer's integrated production operations;

13 (F) to plan, manage, control or record the receipt and flow of inven-
14 tories of raw materials, consumables and component parts, the flow of
15 the property undergoing manufacturing or processing and the manage-
16 ment of inventories of the finished product;

17 (G) to produce energy for, lubricate, control the operating of or oth-
18 erwise enable the functioning of other production machinery and equip-
19 ment and the continuation of production operations;

20 (H) to package the property being manufactured or processed in a
21 container or wrapping in which such property is normally sold or
22 transported;

23 (I) to transmit or transport electricity, coke, gas, water, steam or sim-
24 ilar substances used in production operations from the point of genera-
25 tion, if produced by the manufacturer or processor at the plant site, to
26 that manufacturer's production operation; or, if purchased or delivered
27 from offsite, from the point where the substance enters the site of the
28 plant or facility to that manufacturer's production operations;

29 (J) to cool, heat, filter, refine or otherwise treat water, steam, acid,
30 oil, solvents or other substances that are used in production operations;

31 (K) to provide and control an environment required to maintain cer-
32 tain levels of air quality, humidity or temperature in special and limited
33 areas of the plant or facility, where such regulation of temperature or
34 humidity is part of and essential to the production process;

35 (L) to treat, transport or store waste or other byproducts of produc-
36 tion operations at the plant or facility; or

37 (M) to control pollution at the plant or facility where the pollution is
38 produced by the manufacturing or processing operation.

39 (4) The following machinery, equipment and materials shall be
40 deemed to be exempt even though it may not otherwise qualify as ma-
41 chinery and equipment used as an integral or essential part of an inte-
42 grated production operation: (A) Computers and related peripheral
43 equipment that are utilized by a manufacturing or processing business

1 for engineering of the finished product or for research and development
2 or product design; (B) machinery and equipment that is utilized by a
3 manufacturing or processing business to manufacture or rebuild tangible
4 personal property that is used in manufacturing or processing operations,
5 including tools, dies, molds, forms and other parts of qualifying machinery
6 and equipment; (C) portable plants for aggregate concrete, bulk cement
7 and asphalt including cement mixing drums to be attached to a motor
8 vehicle; (D) industrial fixtures, devices, support facilities and special foun-
9 dations necessary for manufacturing and production operations, and ma-
10 terials and other tangible personal property sold for the purpose of fab-
11 ricating such fixtures, devices, facilities and foundations. An exemption
12 certificate for such purchases shall be signed by the manufacturer or
13 processor. If the fabricator purchases such material, the fabricator shall
14 also sign the exemption certificate; and (E) a manufacturing or processing
15 business' laboratory equipment that is not located at the plant or facility,
16 but that would otherwise qualify for exemption under subsection (3)(E).

17 (5) "Machinery and equipment used as an integral or essential part
18 of an integrated production operation" shall not include:

19 (A) Machinery and equipment used for nonproduction purposes, in-
20 cluding, but not limited to, machinery and equipment used for plant se-
21 curity, fire prevention, first aid, accounting, administration, record keep-
22 ing, advertising, marketing, sales or other related activities, plant cleaning,
23 plant communications, and employee work scheduling;

24 (B) machinery, equipment and tools used primarily in maintaining
25 and repairing any type of machinery and equipment or the building and
26 plant;

27 (C) transportation, transmission and distribution equipment not pri-
28 marily used in a production, warehousing or material handling operation
29 at the plant or facility, including the means of conveyance of natural gas,
30 electricity, oil or water, and equipment related thereto, located outside
31 the plant or facility;

32 (D) office machines and equipment including computers and related
33 peripheral equipment not used directly and primarily to control or mea-
34 sure the manufacturing process;

35 (E) furniture and other furnishings;

36 (F) buildings, other than exempt machinery and equipment that is
37 permanently affixed to or becomes a physical part of the building, and
38 any other part of real estate that is not otherwise exempt;

39 (G) building fixtures that are not integral to the manufacturing op-
40 eration, such as utility systems for heating, ventilation, air conditioning,
41 communications, plumbing or electrical;

42 (H) machinery and equipment used for general plant heating, cooling
43 and lighting;

1 (I) motor vehicles that are registered for operation on public high-
2 ways; or

3 (J) employee apparel, except safety and protective apparel that is pur-
4 chased by an employer and furnished gratuitously to employees who are
5 involved in production or research activities.

6 (6) Subsections (3) and (5) shall not be construed as exclusive listings
7 of the machinery and equipment that qualify or do not qualify as an
8 integral or essential part of an integrated production operation. When
9 machinery or equipment is used as an integral or essential part of pro-
10 duction operations part of the time and for nonproduction purpose at
11 other times, the primary use of the machinery or equipment shall deter-
12 mine whether or not such machinery or equipment qualifies for
13 exemption.

14 (7) The secretary of revenue shall adopt rules and regulations nec-
15 essary to administer the provisions of this subsection;

16 (ll) all sales of educational materials purchased for distribution to the
17 public at no charge by a nonprofit corporation organized for the purpose
18 of encouraging, fostering and conducting programs for the improvement
19 of public health;

20 (mm) all sales of seeds and tree seedlings; fertilizers, insecticides,
21 herbicides, germicides, pesticides and fungicides; and services, purchased
22 and used for the purpose of producing plants in order to prevent soil
23 erosion on land devoted to agricultural use;

24 (nn) except as otherwise provided in this act, all sales of services ren-
25 dered by an advertising agency or licensed broadcast station or any mem-
26 ber, agent or employee thereof;

27 (oo) all sales of tangible personal property purchased by a community
28 action group or agency for the exclusive purpose of repairing or weath-
29 erizing housing occupied by low income individuals;

30 (pp) all sales of drill bits and explosives actually utilized in the explo-
31 ration and production of oil or gas;

32 (qq) all sales of tangible personal property and services purchased by
33 a nonprofit museum or historical society or any combination thereof, in-
34 cluding a nonprofit organization which is organized for the purpose of
35 stimulating public interest in the exploration of space by providing edu-
36 cational information, exhibits and experiences, which is exempt from fed-
37 eral income taxation pursuant to section 501(c)(3) of the federal internal
38 revenue code of 1986;

39 (rr) all sales of tangible personal property which will admit the pur-
40 chaser thereof to any annual event sponsored by a nonprofit organization
41 which is exempt from federal income taxation pursuant to section
42 501(c)(3) of the federal internal revenue code of 1986;

43 (ss) all sales of tangible personal property and services purchased by

1 a public broadcasting station licensed by the federal communications
2 commission as a noncommercial educational television or radio station;

3 (tt) all sales of tangible personal property and services purchased by
4 or on behalf of a not-for-profit corporation which is exempt from federal
5 income taxation pursuant to section 501(c)(3) of the federal internal rev-
6 enue code of 1986, for the sole purpose of constructing a Kansas Korean
7 War memorial;

8 (uu) all sales of tangible personal property and services purchased by
9 or on behalf of any rural volunteer fire-fighting organization for use ex-
10 clusively in the performance of its duties and functions;

11 (vv) all sales of tangible personal property purchased by any of the
12 following organizations which are exempt from federal income taxation
13 pursuant to section 501 (c)(3) of the federal internal revenue code of
14 1986, for the following purposes, and all sales of any such property by or
15 on behalf of any such organization for any such purpose:

16 (1) The American Heart Association, Kansas Affiliate, Inc. for the
17 purposes of providing education, training, certification in emergency car-
18 diac care, research and other related services to reduce disability and
19 death from cardiovascular diseases and stroke;

20 (2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of
21 advocacy for persons with mental illness and to education, research and
22 support for their families;

23 (3) the Kansas Mental Illness Awareness Council for the purposes of
24 advocacy for persons who are mentally ill and to education, research and
25 support for them and their families;

26 (4) the American Diabetes Association Kansas Affiliate, Inc. for the
27 purpose of eliminating diabetes through medical research, public edu-
28 cation focusing on disease prevention and education, patient education
29 including information on coping with diabetes, and professional education
30 and training;

31 (5) the American Lung Association of Kansas, Inc. for the purpose of
32 eliminating all lung diseases through medical research, public education
33 including information on coping with lung diseases, professional educa-
34 tion and training related to lung disease and other related services to
35 reduce the incidence of disability and death due to lung disease;

36 (6) the Kansas chapters of the Alzheimer's Disease and Related Dis-
37 orders Association, Inc. for the purpose of providing assistance and sup-
38 port to persons in Kansas with Alzheimer's disease, and their families and
39 caregivers;

40 (7) the Kansas chapters of the Parkinson's disease association for the
41 purpose of eliminating Parkinson's disease through medical research and
42 public and professional education related to such disease; and

43 (8) the National Kidney Foundation of Kansas and Western Missouri

1 for the purpose of eliminating kidney disease through medical research
2 and public and private education related to such disease;

3 (ww) all sales of tangible personal property purchased by the Habitat
4 for Humanity for the exclusive use of being incorporated within a housing
5 project constructed by such organization;

6 (xx) all sales of tangible personal property and services purchased by
7 a nonprofit zoo which is exempt from federal income taxation pursuant
8 to section 501(c)(3) of the federal internal revenue code of 1986, or on
9 behalf of such zoo by an entity itself exempt from federal income taxation
10 pursuant to section 501(c)(3) of the federal internal revenue code of 1986
11 contracted with to operate such zoo and all sales of tangible personal
12 property or services purchased by a contractor for the purpose of con-
13 structing, equipping, reconstructing, maintaining, repairing, enlarging,
14 furnishing or remodeling facilities for any nonprofit zoo which would be
15 exempt from taxation under the provisions of this section if purchased
16 directly by such nonprofit zoo or the entity operating such zoo. Nothing
17 in this subsection shall be deemed to exempt the purchase of any con-
18 struction machinery, equipment or tools used in the constructing, equip-
19 ping, reconstructing, maintaining, repairing, enlarging, furnishing or re-
20 modeling facilities for any nonprofit zoo. When any nonprofit zoo shall
21 contract for the purpose of constructing, equipping, reconstructing, main-
22 taining, repairing, enlarging, furnishing or remodeling facilities, it shall
23 obtain from the state and furnish to the contractor an exemption certifi-
24 cate for the project involved, and the contractor may purchase materials
25 for incorporation in such project. The contractor shall furnish the number
26 of such certificate to all suppliers from whom such purchases are made,
27 and such suppliers shall execute invoices covering the same bearing the
28 number of such certificate. Upon completion of the project the contractor
29 shall furnish to the nonprofit zoo concerned a sworn statement, on a form
30 to be provided by the director of taxation, that all purchases so made were
31 entitled to exemption under this subsection. All invoices shall be held by
32 the contractor for a period of five years and shall be subject to audit by
33 the director of taxation. If any materials purchased under such a certifi-
34 cate are found not to have been incorporated in the building or other
35 project or not to have been returned for credit or the sales or compen-
36 sating tax otherwise imposed upon such materials which will not be so
37 incorporated in the building or other project reported and paid by such
38 contractor to the director of taxation not later than the 20th day of the
39 month following the close of the month in which it shall be determined
40 that such materials will not be used for the purpose for which such cer-
41 tificate was issued, the nonprofit zoo concerned shall be liable for tax on
42 all materials purchased for the project, and upon payment thereof it may
43 recover the same from the contractor together with reasonable attorney

1 fees. Any contractor or any agent, employee or subcontractor thereof,
2 who shall use or otherwise dispose of any materials purchased under such
3 a certificate for any purpose other than that for which such a certificate
4 is issued without the payment of the sales or compensating tax otherwise
5 imposed upon such materials, shall be guilty of a misdemeanor and, upon
6 conviction therefor, shall be subject to the penalties provided for in sub-
7 section (g) of K.S.A. 79-3615, and amendments thereto;

8 (yy) all sales of tangible personal property and services purchased by
9 a parent-teacher association or organization, and all sales of tangible per-
10 sonal property by or on behalf of such association or organization;

11 (zz) all sales of machinery and equipment purchased by over-the-air,
12 free access radio or television station which is used directly and primarily
13 for the purpose of producing a broadcast signal or is such that the failure
14 of the machinery or equipment to operate would cause broadcasting to
15 cease. For purposes of this subsection, machinery and equipment shall
16 include, but not be limited to, that required by rules and regulations of
17 the federal communications commission, and all sales of electricity which
18 are essential or necessary for the purpose of producing a broadcast signal
19 or is such that the failure of the electricity would cause broadcasting to
20 cease;

21 (aaa) all sales of tangible personal property and services purchased
22 by a religious organization which is exempt from federal income taxation
23 pursuant to section 501(c)(3) of the federal internal revenue code, and
24 used exclusively for religious purposes, and all sales of tangible personal
25 property or services purchased by a contractor for the purpose of con-
26 structing, equipping, reconstructing, maintaining, repairing, enlarging,
27 furnishing or remodeling facilities for any such organization which would
28 be exempt from taxation under the provisions of this section if purchased
29 directly by such organization. Nothing in this subsection shall be deemed
30 to exempt the purchase of any construction machinery, equipment or
31 tools used in the constructing, equipping, reconstructing, maintaining,
32 repairing, enlarging, furnishing or remodeling facilities for any such or-
33 ganization. When any such organization shall contract for the purpose of
34 constructing, equipping, reconstructing, maintaining, repairing, enlarg-
35 ing, furnishing or remodeling facilities, it shall obtain from the state and
36 furnish to the contractor an exemption certificate for the project involved,
37 and the contractor may purchase materials for incorporation in such pro-
38 ject. The contractor shall furnish the number of such certificate to all
39 suppliers from whom such purchases are made, and such suppliers shall
40 execute invoices covering the same bearing the number of such certifi-
41 cate. Upon completion of the project the contractor shall furnish to such
42 organization concerned a sworn statement, on a form to be provided by
43 the director of taxation, that all purchases so made were entitled to ex-

1 exemption under this subsection. All invoices shall be held by the contractor
2 for a period of five years and shall be subject to audit by the director of
3 taxation. If any materials purchased under such a certificate are found
4 not to have been incorporated in the building or other project or not to
5 have been returned for credit or the sales or compensating tax otherwise
6 imposed upon such materials which will not be so incorporated in the
7 building or other project reported and paid by such contractor to the
8 director of taxation not later than the 20th day of the month following
9 the close of the month in which it shall be determined that such materials
10 will not be used for the purpose for which such certificate was issued,
11 such organization concerned shall be liable for tax on all materials pur-
12 chased for the project, and upon payment thereof it may recover the same
13 from the contractor together with reasonable attorney fees. Any contrac-
14 tor or any agent, employee or subcontractor thereof, who shall use or
15 otherwise dispose of any materials purchased under such a certificate for
16 any purpose other than that for which such a certificate is issued without
17 the payment of the sales or compensating tax otherwise imposed upon
18 such materials, shall be guilty of a misdemeanor and, upon conviction
19 therefor, shall be subject to the penalties provided for in subsection (g)
20 of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after
21 July 1, 1998, but prior to the effective date of this act upon the gross
22 receipts received from any sale exempted by the amendatory provisions
23 of this subsection shall be refunded. Each claim for a sales tax refund
24 shall be verified and submitted to the director of taxation upon forms
25 furnished by the director and shall be accompanied by any additional
26 documentation required by the director. The director shall review each
27 claim and shall refund that amount of sales tax paid as determined under
28 the provisions of this subsection. All refunds shall be paid from the sales
29 tax refund fund upon warrants of the director of accounts and reports
30 pursuant to vouchers approved by the director or the director's designee;

31 (bbb) all sales of food for human consumption by an organization
32 which is exempt from federal income taxation pursuant to section 501
33 (c)(3) of the federal internal revenue code of 1986, pursuant to a food
34 distribution program which offers such food at a price below cost in
35 exchange for the performance of community service by the purchaser
36 thereof;

37 (ccc) on and after July 1, 1999, all sales of tangible personal property
38 and services purchased by a primary care clinic or health center the pri-
39 mary purpose of which is to provide services to medically underserved
40 individuals and families, and which is exempt from federal income taxa-
41 tion pursuant to section 501 (c)(3) of the federal internal revenue code,
42 and all sales of tangible personal property or services purchased by a
43 contractor for the purpose of constructing, equipping, reconstructing,

1 maintaining, repairing, enlarging, furnishing or remodeling facilities for
2 any such clinic or center which would be exempt from taxation under the
3 provisions of this section if purchased directly by such clinic or center.
4 Nothing in this subsection shall be deemed to exempt the purchase of
5 any construction machinery, equipment or tools used in the constructing,
6 equipping, reconstructing, maintaining, repairing, enlarging, furnishing
7 or remodeling facilities for any such clinic or center. When any such clinic
8 or center shall contract for the purpose of constructing, equipping, re-
9 constructing, maintaining, repairing, enlarging, furnishing or remodeling
10 facilities, it shall obtain from the state and furnish to the contractor an
11 exemption certificate for the project involved, and the contractor may
12 purchase materials for incorporation in such project. The contractor shall
13 furnish the number of such certificate to all suppliers from whom such
14 purchases are made, and such suppliers shall execute invoices covering
15 the same bearing the number of such certificate. Upon completion of the
16 project the contractor shall furnish to such clinic or center concerned a
17 sworn statement, on a form to be provided by the director of taxation,
18 that all purchases so made were entitled to exemption under this subsec-
19 tion. All invoices shall be held by the contractor for a period of five years
20 and shall be subject to audit by the director of taxation. If any materials
21 purchased under such a certificate are found not to have been incorpo-
22 rated in the building or other project or not to have been returned for
23 credit or the sales or compensating tax otherwise imposed upon such
24 materials which will not be so incorporated in the building or other pro-
25 ject reported and paid by such contractor to the director of taxation not
26 later than the 20th day of the month following the close of the month in
27 which it shall be determined that such materials will not be used for the
28 purpose for which such certificate was issued, such clinic or center con-
29 cerned shall be liable for tax on all materials purchased for the project,
30 and upon payment thereof it may recover the same from the contractor
31 together with reasonable attorney fees. Any contractor or any agent, em-
32 ployee or subcontractor thereof, who shall use or otherwise dispose of
33 any materials purchased under such a certificate for any purpose other
34 than that for which such a certificate is issued without the payment of
35 the sales or compensating tax otherwise imposed upon such materials,
36 shall be guilty of a misdemeanor and, upon conviction therefor, shall be
37 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615,
38 and amendments thereto;

39 (ddd) on and after January 1, 1999, and before January 1, 2000, all
40 sales of materials and services purchased by any class II or III railroad as
41 classified by the federal surface transportation board for the construction,
42 renovation, repair or replacement of class II or III railroad track and
43 facilities used directly in interstate commerce. In the event any such track

1 or facility for which materials and services were purchased sales tax ex-
2 empt is not operational for five years succeeding the allowance of such
3 exemption, the total amount of sales tax which would have been payable
4 except for the operation of this subsection shall be recouped in accord-
5 ance with rules and regulations adopted for such purpose by the secretary
6 of revenue;

7 (eee) on and after January 1, 1999, and before January 1, 2001, all
8 sales of materials and services purchased for the original construction,
9 reconstruction, repair or replacement of grain storage facilities, including
10 railroad sidings providing access thereto;

11 (fff) all sales of material handling equipment, racking systems and
12 other related machinery and equipment that is used for the handling,
13 movement or storage of tangible personal property in a warehouse or
14 distribution facility in this state; all sales of installation, repair and main-
15 tenance services performed on such machinery and equipment; and all
16 sales of repair and replacement parts for such machinery and equipment.
17 For purposes of this subsection, a warehouse or distribution facility means
18 a single, fixed location that consists of buildings or structures in a contig-
19 uous area where storage or distribution operations are conducted that are
20 separate and apart from the business' retail operations, if any, and which
21 do not otherwise qualify for exemption as occurring at a manufacturing
22 or processing plant or facility. Material handling and storage equipment
23 shall include aeration, dust control, cleaning, handling and other such
24 equipment that is used in a public grain warehouse or other commercial
25 grain storage facility, whether used for grain handling, grain storage, grain
26 refining or processing, or other grain treatment operation; ~~and~~

27 (ggg) all sales of tangible personal property and services purchased
28 by or on behalf of the Kansas Academy of Science which is exempt from
29 federal income taxation pursuant to section 501(c)(3) of the federal in-
30 ternal revenue code of 1986, and used solely by such academy for the
31 preparation, publication and dissemination of education materials; *and*

32 *(hhh) all sales of admissions to school-related activities whether in-*
33 *cidental to curricular activities or whether athletic or other extra curric-*
34 *ular programs or activities sponsored by a public or private elementary*
35 *or secondary school and all sales of tangible personal property by or on*
36 *behalf of a public or private elementary or secondary school at such*
37 *school-related activities.*

38 Sec. 2. K.S.A. 2002 Supp. 79-3606 is hereby repealed.

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

41

42

43