

HOUSE BILL No. 2459

By Committee on Taxation

3-25

AN ACT concerning taxation; relating to sales and compensating tax; retailer; definition of doing business in state; amending K.S.A. 79-3702 and repealing the existing section.

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

Section 1. K.S.A. 79-3702 is hereby amended to read as follows: 79-3702. For the purposes of this act: (a) "Purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale it shall be deducted in arriving at the purchase price.

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

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

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

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

1 outside the state and thereafter used solely outside the state.

2 (f) "Property used in processing" means: (1) Any tangible personal
3 property which, when used in fabrication, compounding, manufacturing
4 or germination, becomes an integral part of the new article resulting from
5 such fabrication, compounding, manufacturing, or germination, and in-
6 tended to be sold ultimately at retail; (2) fuel which is consumed in cre-
7 ating power, heat, or steam for processing or for generating electric
8 current.

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

20 (h) (1) "Retailer doing business in this state" or any like term, means:
21 (A) Any retailer: ~~(1) having or maintaining within in this state, perma-~~
22 ~~ently, temporarily, directly or by indirectly through a subsidiary, agent~~
23 ~~or representative, an office, distribution house, sales house, warehouse or~~
24 ~~other place of business, or any agent or other representative operating~~
25 ~~within this state under the authority of the retailer or its subsidiary, ir-~~
26 ~~respective of whether such place of business or agent is located here~~
27 ~~permanently or temporarily, or whether such retailer or subsidiary is ad-~~
28 ~~mitted to do business within the state; (2) engaging in regular or system-~~
29 ~~atic solicitation of sales of tangible personal property in this state by the~~
30 ~~distribution of catalogs, periodicals, advertising flyers, or other advertis-~~
31 ~~ing, by means of print, radio or television media, or by mail, telegraphy,~~
32 ~~telephone, computer data base, cable, optic, microwave or other com-~~
33 ~~munication system for the purpose of effecting retail sales of tangible~~
34 ~~personal property;~~

35 (B) *any retailer having an employee, independent contractor, agent,*
36 *representative, salesperson, canvasser or solicitor operating in this state*
37 *either permanently or temporarily, under the authority of the retailer or*
38 *its subsidiary, for the purpose of selling, delivering, installing, assembling,*
39 *servicing, repairing, soliciting sales or the taking of orders for tangible*
40 *personal property;*

41 (C) *any retailer, including a contractor, repair person or other service*
42 *provider, who enters this state to perform services that are enumerated*
43 *in K.S.A. 79-3603 and amendments thereto, and who is required to secure*

1 a retailer's sales tax registration certificate before performing those
2 services;

3 (D) any retailer deriving rental receipts from a lease of tangible per-
4 sonal property situated in this state;

5 (E) any person having a franchisee or licensee operating under its
6 trade name if the franchisee or the licensee is required to collect the tax
7 under the Kansas retailers' sales tax act;

8 (F) any person regularly maintaining a stock of tangible personal
9 property in this state for sale in the normal course of business; and

10 (G) any retailer who has any other contact with this state that would
11 allow this state to require the retailer to collect and remit tax under the
12 provisions of the constitution and laws of the United States.

13 (2) A retailer shall be presumed to be doing business in this state if:

14 (A) Both of the following conditions exist:

15 (i) The retailer holds a substantial ownership interest in, or is owned
16 in whole substantial part by, a retailer maintaining a sales location in
17 Kansas; and

18 (ii) the retailer sells the same or a substantially similar line of products
19 as the related Kansas retailer and does so under the same or a substantially
20 similar business name, or the Kansas facilities or Kansas employees of the
21 related Kansas retailer are used to advertise, promote or facilitate sales
22 by the retailer to consumers.

23 (B) The retailer holds a substantial ownership interest in, or is owned
24 in whole or in substantial part by, a business that maintains a distribution
25 house, sales house, warehouse or similar place of business in Kansas that
26 delivers property sold by the retailer to consumers.

27 (C) For purposes of paragraphs (A) and (B):

28 (i) "Substantial ownership interest" means an interest in an entity
29 that is not less than the degree of ownership of equity interest in an entity
30 that is specified by Section 78p of Title 15 of the United States Code, or
31 any successor to that statute, with respect to a person other than a director
32 or officer; and

33 (ii) "ownership" means and includes both direct ownership, and in-
34 direct ownership through a parent, subsidiary or affiliate.

35 (3) The processing of orders electronically, by fax, telephone, the in-
36 ternet or other electronic ordering process, does not relieve a retailer of
37 responsibility for collection of the tax from the purchaser if the retailer is
38 doing business in this state pursuant to this section.

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

40 New Sec. 2. When tangible personal property is delivered by an
41 owner or former owner thereof, or by a factor, or agent of that owner,
42 former owner or factor to a consumer, pursuant to a retail sale made by
43 a retailer who has not been issued a registration certificate pursuant to

1 K.S.A. 79-3608 and amendments thereto, or a permit issued pursuant to
2 K.S.A. 79-3705d and amendments thereto, the person making the deliv-
3 ery shall be deemed the retailer of that property. Such person shall in-
4 clude the retail selling price of the property in such person's gross re-
5 cepts. As used in this section, "factor" means either an agent who is
6 employed to sell property for the principal and who is vested with pos-
7 session or control of the property or a person who receives and sells goods
8 for a commission. This section shall be part of and supplemental to the
9 Kansas retailers' sales tax act.

10 Sec. 3. K.S.A. 79-3702 is hereby repealed.

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

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