

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2004

## HOUSE BILL No. 2599

By Committee on Taxation

1-26

12 AN ACT concerning sales taxation; relating to destination sourcing rules;  
13 [time of returns and payment of tax; waiver of certain penalties  
14 and interest; sales tax reimbursement payment;] [remittance  
15 credits;] amending K.S.A. 2003 Supp. 12-191, 79-3603, [79-3607, 79-  
16 3615,] 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-  
17 3673 and[,] 79-3682 [and 79-3706] and repealing the existing sec-  
18 tions; also repealing K.S.A. 2003 Supp. 79-3603c.  
19

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

21 Section 1. K.S.A. 2003 Supp. 12-191 is hereby amended to read as  
22 follows: 12-191. All retail transactions consummated within a county or  
23 city having a retail sales tax, which transactions are subject to the Kansas  
24 retailers' sales tax, shall also be subject to such county or city retail sales  
25 tax. Except as hereinafter provided, all retail sales, for the purpose of this  
26 act, shall be considered to have been consummated: (1) ~~Except as pro-~~  
27 ~~vided in section 11, commencing~~ **Commencing** on the effective date of  
28 this act and ending on the date that legislation enacted by the United  
29 States Congress becomes effective that authorizes the secretary of revenue  
30 to require some out-of-state, remote sellers lacking physical presence in  
31 this state to collect and remit state and local sales or use taxes, at the place  
32 of business of the retailer. During such time period, retail sales involving  
33 the use, consumption, or furnishing of gas, water, electricity and heat, for  
34 the purposes of this act, shall be considered to have been consummated  
35 at the situs of the user or recipient thereof, and retail sales involving the  
36 use or furnishing of telephone service or services taxed under subsection  
37 (k) of K.S.A. 79-3603, and amendments thereto, shall be considered to  
38 have been consummated at the situs of the subscriber billed therefor; retail  
39 sales involving the leasing of telecommunication or data processing equip-  
40 ment commonly used in connection with telephone services shall be con-  
41 sidered to have been consummated at the situs of the lessee; and retail  
42 sales involving the furnishing of services taxable under subsection (p), (q)  
43 and (r) of K.S.A. 79-3603, and amendments thereto, pursuant to a contract

1 *under which the sale of such services and the furnishing of tangible per-*  
2 *sonal property exceeds \$10,000 per contract per contractor shall be con-*  
3 *sidered to have been consummated at the situs where such services are*  
4 *performed; and (2) on and after the date that legislation enacted by the*  
5 *United States Congress becomes effective that authorizes the secretary of*  
6 *revenue to require some out-of-state, remote sellers lacking physical pres-*  
7 *ence in this state to collect and remit state and local sales or use taxes, at*  
8 *the location determined by the sourcing rules as provided in K.S.A. 2003*  
9 *Supp. 79-3670, 79-3671, 79-3672 and 79-3673, and amendments thereto.*  
10 The retail sales or transfer of watercraft, modular homes, manufactured  
11 homes or mobile homes, shall be considered consummated at the place  
12 of business of the retailer and sourced to such location. The retail sale,  
13 excluding the lease or rental, of motor vehicles, trailers, semi-trailers or  
14 aircraft that do not qualify as transportation equipment, as defined in  
15 subsection (d) of K.S.A. 2003 Supp. 79-3670, and amendments thereto,  
16 shall be considered consummated at the place of business of the retailer  
17 and sourced to such location.

18 The isolated or occasional sale of any motor vehicle or trailer shall be  
19 considered consummated at the taxing jurisdiction where the sale is made.  
20 If the sale negotiations occurred in different cities or counties, the situs  
21 of the sale for local sales tax purposes shall be the place where the motor  
22 vehicle or trailer was kept at the time negotiations were first entered into.  
23 In the event the place of business of a retailer is doubtful the place or  
24 places at which the retail sales are consummated for the purposes of this  
25 act shall be determined under rules and regulations adopted by the sec-  
26 retary of revenue which rules and regulations shall be considered with  
27 state and federal law insofar as applicable. The director of taxation is  
28 hereby authorized to request and receive from any retailer or from any  
29 city or county levying the tax such information as may be reasonably  
30 necessary to determine the liability of retailers for any county or city sales  
31 tax. The collection of any sales tax of a county or city approved at any  
32 election shall commence on the first day of the calendar quarter next  
33 following the 90th day after the date that the city or county has provided  
34 written notice to the director of taxation of the election authorizing the  
35 levy of such tax. The collection of any such sales tax applicable to printed  
36 catalog purchases wherein the purchaser computed the tax based upon  
37 local tax rates published in the catalog, shall not commence until the first  
38 day of the calendar quarter next following the 150th day after the date  
39 that the city or county has provided written notice to the director of  
40 taxation of the election authorizing the levy of such tax. The director of  
41 taxation shall provide notice to sellers of such taxes within 30 days after  
42 receiving such notice from the city or county.

43 A city retailers' sales tax shall not become effective within any area

1 annexed by a city levying such tax until the first day of the calendar quarter  
2 next following the 90th day after the date that the governing body of such  
3 city provided the state department of revenue with a certified copy of the  
4 annexation ordinance and a map of the city detailing the annexed area.  
5 The director of taxation shall provide notice to sellers of such tax within  
6 30 days after receiving such notice from the city or county.

7 Whenever any sales tax, imposed by any city or county under the pro-  
8 visions of this act, shall become effective, at any time prior to the time  
9 that revenue derived therefrom may be budgeted for expenditure in such  
10 year, such revenue shall be credited to the funds of the taxing subdivision  
11 or subdivisions and shall be carried forward to the credit of such funds  
12 for the ensuing budget year in the manner provided for carrying forward  
13 balances remaining in such funds at the end of a budget year.

14 Sec. 2. K.S.A. 2003 Supp. 79-3603 is hereby amended to read as  
15 follows: 79-3603. For the privilege of engaging in the business of selling  
16 tangible personal property at retail in this state or rendering or furnishing  
17 any of the services taxable under this act, there is hereby levied and there  
18 shall be collected and paid a tax at the rate of 5.3% on and after July 1,  
19 2002, and before July 1, ~~2004~~, ~~5.2% on and after July 1, 2004, and before~~  
20 ~~July 1, 2005~~ 2006, and 5% on and after July 1, ~~2005~~ 2006, and, within a  
21 redevelopment district established pursuant to K.S.A. 74-8921, and  
22 amendments thereto, there is hereby levied and there shall be collected  
23 and paid an additional tax at the rate of 2% until the earlier of the date  
24 the bonds issued to finance or refinance the redevelopment project have  
25 been paid in full or the final scheduled maturity of the first series of bonds  
26 issued to finance any part of the project upon:

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

29 (b) (1) the gross receipts from intrastate telephone or telegraph serv-  
30 ices; (2) the gross receipts received from the sale of interstate telephone  
31 or telegraph services, which (A) originate within this state and terminate  
32 outside the state and are billed to a customer's telephone number or  
33 account in this state; or (B) originate outside this state and terminate  
34 within this state and are billed to a customer's telephone number or ac-  
35 count in this state except that the sale of interstate telephone or telegraph  
36 service does not include: (A) Any interstate incoming or outgoing wide  
37 area telephone service or wide area transmission type service which en-  
38 titles the subscriber to make or receive an unlimited number of com-  
39 munications to or from persons having telephone service in a specified  
40 area which is outside the state in which the station provided this service  
41 is located; (B) any interstate private communications service to the per-  
42 sons contracting for the receipt of that service that entitles the purchaser  
43 to exclusive or priority use of a communications channel or group of

1 channels between exchanges; (C) any value-added nonvoice service in  
2 which computer processing applications are used to act on the form, con-  
3 tent, code or protocol of the information to be transmitted; (D) any tel-  
4 ecommunication service to a provider of telecommunication services  
5 which will be used to render telecommunications services, including car-  
6 rier access services; or (E) any service or transaction defined in this sec-  
7 tion among entities classified as members of an affiliated group as pro-  
8 vided by section 1504 of the federal internal revenue code of 1986, as in  
9 effect on January 1, 2001; and (3) the gross receipts from the provision  
10 of services taxable under this subsection which are billed on a combined  
11 basis with nontaxable services, shall be accounted for and the tax remitted  
12 as follows: The taxable portion of the selling price of those combined  
13 services shall include only those charges for taxable services if the selling  
14 price for the taxable services can be readily distinguishable in the retailer's  
15 books and records from the selling price for the nontaxable services. Oth-  
16 erwise, the gross receipts from the sale of both taxable and nontaxable  
17 services billed on a combined basis shall be deemed attributable to the  
18 taxable services included therein. Within 90 days of billing taxable services  
19 on a combined basis with nontaxable services, the retailer shall enter into  
20 a written agreement with the secretary identifying the methodology to be  
21 used in determining the taxable portion of the selling price of those com-  
22 bined services. The burden of proving that any receipt or charge is not  
23 taxable shall be upon the retailer. Upon request from the customer, the  
24 retailer shall disclose to the customer the selling price for the taxable  
25 services included in the selling price for the taxable and nontaxable serv-  
26 ices billed on a combined basis;

27 (c) the gross receipts from the sale or furnishing of gas, water, elec-  
28 tricity and heat, which sale is not otherwise exempt from taxation under  
29 the provisions of this act, and whether furnished by municipally or pri-  
30 vately owned utilities, except that, on and after January 1, 2006, for sales  
31 of gas, electricity and heat delivered through mains, lines or pipes to  
32 residential premises for noncommercial use by the occupant of such  
33 premises, and for agricultural use and also, for such use, all sales of pro-  
34 pane gas, the state rate shall be 0%; and for all sales of propane gas, LP  
35 gas, coal, wood and other fuel sources for the production of heat or light-  
36 ing for noncommercial use of an occupant of residential premises, the  
37 state rate shall be 0%, but such tax shall not be levied and collected upon  
38 the gross receipts from: (1) The sale of a rural water district benefit unit;  
39 (2) a water system impact fee, system enhancement fee or similar fee  
40 collected by a water supplier as a condition for establishing service; or (3)  
41 connection or reconnection fees collected by a water supplier;

42 (d) the gross receipts from the sale of meals or drinks furnished at  
43 any private club, drinking establishment, catered event, restaurant, eating

1 house, dining car, hotel, drugstore or other place where meals or drinks  
2 are regularly sold to the public;

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

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

11 (g) the gross receipts from the service of renting of rooms by hotels,  
12 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-  
13 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto  
14 but such tax shall not be levied and collected upon the gross receipts  
15 received from sales of such service to the federal government and any  
16 agency, officer or employee thereof in association with the performance  
17 of official government duties;

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

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

32 (j) the gross receipts from the rendering of the services of washing  
33 and washing and waxing of vehicles;

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

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

41 (2) Any such contractor, subcontractor or repairman who maintains  
42 an inventory of such property both for sale at retail and for use by them  
43 for the purposes described by paragraph (1) shall be deemed a retailer

1 with respect to purchases for and sales from such inventory, except that  
2 the gross receipts received from any such sale, other than a sale at retail,  
3 shall be equal to the total purchase price paid for such property and the  
4 tax imposed thereon shall be paid by the deemed retailer;

5 (m) the gross receipts received from fees and charges by public and  
6 private clubs, drinking establishments, organizations and businesses for  
7 participation in sports, games and other recreational activities, but such  
8 tax shall not be levied and collected upon the gross receipts received from:  
9 (1) Fees and charges by any political subdivision, by any organization  
10 exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-  
11 201, and amendments thereto, or by any youth recreation organization  
12 exclusively providing services to persons 18 years of age or younger which  
13 is exempt from federal income taxation pursuant to section 501(c)(3) of  
14 the federal internal revenue code of 1986, for participation in sports,  
15 games and other recreational activities; and (2) entry fees and charges for  
16 participation in a special event or tournament sanctioned by a national  
17 sporting association to which spectators are charged an admission which  
18 is taxable pursuant to subsection (e);

19 (n) the gross receipts received from dues charged by public and pri-  
20 vate clubs, drinking establishments, organizations and businesses, pay-  
21 ment of which entitles a member to the use of facilities for recreation or  
22 entertainment, but such tax shall not be levied and collected upon the  
23 gross receipts received from: (1) Dues charged by any organization ex-  
24 empt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of  
25 K.S.A. 79-201, and amendments thereto; and (2) sales of memberships  
26 in a nonprofit organization which is exempt from federal income taxation  
27 pursuant to section 501 (c)(3) of the federal internal revenue code of  
28 1986, and whose purpose is to support the operation of a nonprofit zoo;

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

- 1 purchaser to the seller may be deducted from the selling price;
- 2 (p) the gross receipts received for the service of installing or applying  
3 tangible personal property which when installed or applied is not being  
4 held for sale in the regular course of business, and whether or not such  
5 tangible personal property when installed or applied remains tangible  
6 personal property or becomes a part of real estate, except that no tax shall  
7 be imposed upon the service of installing or applying tangible personal  
8 property in connection with the original construction of a building or  
9 facility, the original construction, reconstruction, restoration, remodeling,  
10 renovation, repair or replacement of a residence or the construction, re-  
11 construction, restoration, replacement or repair of a bridge or highway.
- 12 For the purposes of this subsection:
- 13 (1) “Original construction” shall mean the first or initial construction  
14 of a new building or facility. The term “original construction” shall include  
15 the addition of an entire room or floor to any existing building or facility,  
16 the completion of any unfinished portion of any existing building or fa-  
17 cility and the restoration, reconstruction or replacement of a building or  
18 facility damaged or destroyed by fire, flood, tornado, lightning, explosion  
19 or earthquake, but such term, except with regard to a residence, shall not  
20 include replacement, remodeling, restoration, renovation or reconstruc-  
21 tion under any other circumstances;
- 22 (2) “building” shall mean only those enclosures within which individ-  
23 uals customarily are employed, or which are customarily used to house  
24 machinery, equipment or other property, and including the land improve-  
25 ments immediately surrounding such building;
- 26 (3) “facility” shall mean a mill, plant, refinery, oil or gas well, water  
27 well, feedlot or any conveyance, transmission or distribution line of any  
28 cooperative, nonprofit, membership corporation organized under or sub-  
29 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,  
30 or of any municipal or quasi-municipal corporation, including the land  
31 improvements immediately surrounding such facility; and
- 32 (4) “residence” shall mean only those enclosures within which indi-  
33 viduals customarily live;
- 34 (q) the gross receipts received for the service of repairing, servicing,  
35 altering or maintaining tangible personal property which when such serv-  
36 ices are rendered is not being held for sale in the regular course of busi-  
37 ness, and whether or not any tangible personal property is transferred in  
38 connection therewith. The tax imposed by this subsection shall be appli-  
39 cable to the services of repairing, servicing, altering or maintaining an  
40 item of tangible personal property which has been and is fastened to,  
41 connected with or built into real property;
- 42 (r) the gross receipts from fees or charges made under service or  
43 maintenance agreement contracts for services, charges for the providing

1 of which are taxable under the provisions of subsection (p) or (q);

2 (s) the gross receipts received from the sale of computer software,  
3 the sale of the service of providing computer software other than pre-  
4 written computer software and the sale of the services of modifying, al-  
5 tering, updating or maintaining computer software, whether the com-  
6 puter software is installed or delivered electronically by tangible storage  
7 media physically transferred to the purchaser or by load and leave;

8 (t) the gross receipts received for telephone answering services, mo-  
9 bile telecommunication services, beeper services and other similar serv-  
10 ices. On and after August 1, 2002, the provisions of the federal mobile  
11 telecommunications sourcing act as in effect on January 1, 2002, shall be  
12 applicable to all sales of mobile telecommunication services taxable pur-  
13 suant to this subsection. The secretary of revenue is hereby authorized  
14 and directed to perform any act deemed necessary to properly implement  
15 such provisions;

16 (u) the gross receipts received from the sale of prepaid calling service  
17 ~~as defined in K.S.A. 2003 Supp. 79-3673, and amendments thereto. As~~  
18 *used in this subsection “prepaid calling service” means the right to access*  
19 *exclusively telecommunications services, which must be paid for in ad-*  
20 *advance and which enables the origination of calls using an access number*  
21 *or authorization code, whether manually or electronically dialed, and that*  
22 *is sold in predetermined units or dollars of which the number declines*  
23 *with use in a known amount; and*

24 (v) the gross receipts received from the sales of bingo cards, bingo  
25 faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*,  
26 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,  
27 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before  
28 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo  
29 faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*,  
30 and amendments thereto, shall be exempt from taxes imposed pursuant  
31 to this section.

32 Sec. 3. K.S.A. 2003 Supp. 79-3667 is hereby amended to read as  
33 follows: 79-3667. On and after the databases are developed pursuant to  
34 subsections (a), (b) and (c) of K.S.A. 2003 Supp. 79-3668 and amend-  
35 ments thereto and after the state has joined and become a member of  
36 the agreement, sellers and certified service providers (CSPs) are relieved  
37 from liability for state and local sales and use tax for having charged and  
38 collected the incorrect amount of sales tax resulting from the seller or  
39 certified service provider relying on erroneous data provided by the sec-  
40 retary on tax rates, boundaries or taxing jurisdiction assignments. If the  
41 secretary provides an address-based system for assigning taxing jurisdic-  
42 tions that meets the requirements developed pursuant to the federal mo-  
43 bile telecommunications sourcing act, no liability relief is provided to



1 sellers or certified service providers for errors resulting from reliance on  
2 the information provided under the provisions of subsection (c) of K.S.A.  
3 2003 Supp. 79-3668 and amendments thereto. ~~Except as provided in sec-~~  
4 ~~tion 11, the~~ **The** provisions of this section shall not be effective for the  
5 period commencing on the effective date of this act, and ending on the  
6 date that legislation enacted by the United States Congress becomes ef-  
7 fective that authorizes the secretary of revenue to require some out-of-  
8 state, remote sellers lacking physical presence in this state to collect and  
9 remit state and local sales or use taxes.

10 Sec. 4. K.S.A. 2003 Supp. 79-3668 is hereby amended to read as  
11 follows: 79-3668. (a) The secretary shall provide and maintain a database  
12 that describes boundary changes for all taxing jurisdictions. This database  
13 shall include a description of the change and the effective date of the  
14 change for sales and use tax purposes.

15 (b) The secretary shall provide and maintain a database of all sales  
16 and use tax rates for all taxing jurisdictions. For the identification of coun-  
17 ties and cities, codes corresponding to the rates must be provided ac-  
18 cording to federal information processing standards (FIPS) as developed  
19 by the national institute of standards and technology. For the identifica-  
20 tion of all other jurisdictions, codes corresponding to the rates must be  
21 in the format determined by the secretary.

22 (c) The secretary must provide and maintain a database that assigns  
23 each five- and nine-digit zip code to the proper rates and taxing jurisdic-  
24 tions. The lowest combined tax rate imposed in the zip code area shall  
25 apply if the area includes more than one tax rate in any level of taxing  
26 jurisdiction. If a nine-digit zip code designation is not available for a street  
27 address, or if a seller is unable to determine the nine-digit zip code des-  
28 ignation of a purchaser after exercising due diligence to determine the  
29 designation, the seller may apply the rate for the five-digit zip code area.  
30 For purposes of this section, there is a rebuttable presumption that a  
31 seller has exercised due diligence if the seller has attempted to determine  
32 the nine-digit zip code designation by utilizing software approved by the  
33 secretary that makes this designation from the street address and the five-  
34 digit zip code of the purchaser.

35 (d) The secretary shall participate with other member states in the  
36 development of an address-based system for assigning taxing jurisdictions.  
37 The system must meet the requirements developed pursuant to the fed-  
38 eral mobile telecommunications sourcing act (4 U.S.C. § 119).

39 (e) The electronic databases provided for in subsections (a), (b), (c)  
40 and (d) shall be in downloadable format as determined by the secretary.  
41 The provisions of subsections (c) and (d) do not apply when the purchased  
42 product is received by the purchaser at the business location of the seller.

43 (f) ~~Except as provided in section 11, the~~ **The** provisions of this section

1 *shall not be effective for the period commencing on the effective date of*  
2 *this act, and ending on the date that legislation enacted by the United*  
3 *States Congress becomes effective that authorizes the secretary of revenue*  
4 *to require some out-of-state, remote sellers lacking physical presence in*  
5 *this state to collect and remit state and local sales or use taxes.*

6 Sec. 5. K.S.A. 2003 Supp. 79-3669 is hereby amended to read as  
7 follows: 79-3669. (a) The retail sale of a product shall be sourced in ac-  
8 cordance with K.S.A. 2003 Supp. 79-3670 and amendments thereto. The  
9 provisions of K.S.A. 2003 Supp. 79-3670 and amendments thereto apply  
10 regardless of the characterization of a product as tangible personal prop-  
11 erty, a digital good or a service. The provisions of K.S.A. 2003 Supp. 79-  
12 3670 and amendments thereto only apply to determine a seller's obliga-  
13 tion to pay or collect and remit a sales or use tax with respect to the  
14 seller's retail sale of a product. These provisions do not affect the obli-  
15 gation of a purchaser or lessee to remit tax on the use of the product to  
16 the taxing jurisdictions of that use.

17 (b) K.S.A. 2003 Supp. 79-3670 and amendments thereto does not  
18 apply to sales or use taxes levied on the following: (1) The retail sale or  
19 transfer of water craft, modular homes, manufactured homes or mobile  
20 homes. The retail sale of these items shall be sourced according to K.S.A.  
21 12-191 and amendments thereto;

22 (2) the retail sales, excluding lease or rental, of motor vehicles, trail-  
23 ers, semi-trailers or aircraft that do not qualify as transportation equip-  
24 ment, as defined in subsection (d) of K.S.A. 2003 Supp. 79-3670 and  
25 amendments thereto. The retail sale of these items shall be sourced ac-  
26 cording to K.S.A. 12-191 and amendments thereto and the lease or rental  
27 of these items must be sourced according to subsection (c) of K.S.A. 2003  
28 Supp. 79-3670 and amendments thereto; and

29 (3) telecommunications services, as set out in K.S.A. 2003 Supp. 79-  
30 3673 and amendments thereto, shall be sourced in accordance with  
31 K.S.A. 2003 Supp. 79-3673 and amendments thereto.

32 ~~Except as provided in section 11, the~~ **The** *provisions of this section*  
33 *shall not be effective for the period commencing on the effective date of*  
34 *this act, and ending on the date that legislation enacted by the United*  
35 *States Congress becomes effective that authorizes the secretary of revenue*  
36 *to require some out-of-state, remote sellers lacking physical presence in*  
37 *this state to collect and remit state and local sales or use taxes.*

38 Sec. 6. K.S.A. 2003 Supp. 79-3670 is hereby amended to read as  
39 follows: 79-3670. (a) The retail sale, excluding lease or rental, of a product  
40 shall be sourced as follows: (1) When the product is received by the  
41 purchaser at a business location of the seller, the sale is sourced to that  
42 business location;

43 (2) when the product is not received by the purchaser at a business

1 location of the seller, the sale is sourced to the location where receipt by  
2 the purchaser, or the purchaser's donee, designated as such by the pur-  
3 chaser, occurs, including the location indicated by instructions for delivery  
4 to the purchaser or donee, known to the seller;

5 (3) when subsection (a)(1) and (a)(2) do not apply, the sale is sourced  
6 to the location indicated by an address for the purchaser that is available  
7 from the business records of the seller that are maintained in the ordinary  
8 course of the seller's business when use of this address does not constitute  
9 bad faith;

10 (4) when subsections (a)(1), (a)(2) and (a)(3) do not apply, the sale is  
11 sourced to the location indicated by an address for the purchaser obtained  
12 during the consummation of the sale, including the address of a pur-  
13 chaser's payment instrument, if no other address is available, when use  
14 of this address does not constitute bad faith;

15 (5) when none of the previous rules of subsection (a)(1), (a)(2), (a)(3)  
16 or (a)(4) apply, including the circumstance in which the seller is without  
17 sufficient information to apply the previous rules, then the location will  
18 be determined by the address from which tangible personal property was  
19 shipped, from which the digital good or the computer software delivered  
20 electronically was first available for transmission by the seller, or from  
21 which the service was provided, disregarding for these purposes any lo-  
22 cation that merely provided the digital transfer of the product sold.

23 (b) The lease or rental of tangible personal property, other than prop-  
24 erty identified in subsection (c) or (d), shall be sourced as follows: (1) For  
25 a lease or rental that requires recurring periodic payments, the first pe-  
26 riodic payment is sourced the same as a retail sale in accordance with the  
27 provisions of subsection (a). Periodic payments made subsequent to the  
28 first payment are sourced to the primary property location for each period  
29 covered by the payment. The primary property location shall be as indi-  
30 cated by an address for the property provided by the lessee that is avail-  
31 able to the lessor from its records maintained in the ordinary course of  
32 business, when use of this address does not constitute bad faith. The  
33 property location shall not be altered by intermittent use at different  
34 locations, such as use of business property that accompanies employees  
35 on business trips and service calls;

36 (2) for a lease or rental that does not require recurring periodic pay-  
37 ments, the payment is sourced the same as a retail sale in accordance  
38 with the provisions of subsection (a); and

39 (3) this subsection does not affect the imposition or computation of  
40 sales or use tax on leases or rentals based on a lump sum or accelerated  
41 basis, or on the acquisition of property for lease.

42 (c) The lease or rental of motor vehicles, trailers, semi-trailers or air-  
43 craft that do not qualify as transportation equipment, as defined in sub-

- 1 section (d), shall be sourced as follows: (1) For a lease or rental that  
2 requires recurring periodic payments, each periodic payment is sourced  
3 to the primary property location. The primary property location shall be  
4 as indicated by an address for the property provided by the lessee that is  
5 available to the lessor from its records maintained in the ordinary course  
6 of business, when use of this address does not constitute bad faith. This  
7 location shall not be altered by intermittent use at different locations;
- 8 (2) for a lease or rental that does not require recurring periodic pay-  
9 ments, the payment is sourced the same as a retail sale in accordance  
10 with the provisions of subsection (a); and
- 11 (3) this subsection does not affect the imposition or computation of  
12 sales or use tax on leases or rentals based on a lump sum or accelerated  
13 basis or on the acquisition of property for lease.
- 14 (d) The retail sale, including lease or rental, of transportation equip-  
15 ment shall be sourced the same as a retail sale in accordance with the  
16 provisions of subsection (a), notwithstanding the exclusion of lease or  
17 rental in subsection (a). “Transportation equipment” means any of the  
18 following: (1) Locomotives and railcars that are utilized for the carriage  
19 of persons or property in interstate commerce;
- 20 (2) trucks and truck-tractors with a gross vehicle weight rating  
21 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger  
22 buses that are: (A) Registered through the international registration plan;  
23 and
- 24 (B) operated under authority of a carrier authorized and certificated  
25 by the United States department of transportation or another federal or  
26 a foreign authority to engage in the carriage of persons or property in  
27 interstate or foreign commerce;
- 28 (3) aircraft that are operated by air carriers authorized and certifi-  
29 cated by the United States department of transportation or another fed-  
30 eral or a foreign authority to engage in the carriage of persons or property  
31 in interstate or foreign commerce; and
- 32 (4) containers designed for use on and component parts attached or  
33 secured on the items set forth in subsection (d)(1), (d)(2) and (d)(3).
- 34 (e) As used in this section, the terms “receive” and “receipt” mean:
- 35 (1) Taking possession of tangible personal property;
- 36 (2) making first use of services; or
- 37 (3) taking possession or making first use of digital goods, whichever  
38 comes first. The terms receive and receipt do not include possession by  
39 a shipping company on behalf of the purchaser.
- 40 (f) ~~Except as provided in section 11, the~~ **The** provisions of this section  
41 shall not be effective for the period commencing on the effective date of  
42 this act, and ending on the date that legislation enacted by the United  
43 States Congress becomes effective that authorizes the secretary of revenue

1 *to require some out-of-state, remote sellers lacking physical presence in*  
2 *this state to collect and remit state and local sales or use taxes.*

3 Sec. 7. K.S.A. 2003 Supp. 79-3671 is hereby amended to read as  
4 follows: 79-3671. (a) Notwithstanding the provisions of K.S.A. 2003 Supp.  
5 79-3670 and amendments thereto, a business purchaser that is not a  
6 holder of a direct pay permit that knows at the time of its purchase of a  
7 digital good, computer software delivered electronically or a service that  
8 the digital good, computer software delivered electronically or service will  
9 be concurrently available for use in more than one jurisdiction shall de-  
10 liver to the seller in conjunction with its purchase a multiple points of use  
11 or MPU exemption form disclosing this fact.

12 (b) Upon receipt of the MPU exemption form, the seller is relieved  
13 of all obligation to collect, pay or remit the applicable tax and the pur-  
14 chaser shall be obligated to collect, pay or remit the applicable tax on a  
15 direct pay basis.

16 (c) A purchaser delivering the MPU exemption form may use any  
17 reasonable, but consistent and uniform, method of apportionment that is  
18 supported by the purchaser's business records as they exist at the time of  
19 the consummation of the sale.

20 (d) The MPU exemption form will remain in effect for all future sales  
21 by the seller to the purchaser, except as to the subsequent sale's specific  
22 apportionment that is governed by the principle of subsection (c) and the  
23 facts existing at the time of the sale, until it is revoked in writing.

24 (e) A holder of a direct pay permit shall not be required to deliver  
25 the MPU exemption form to the seller. A direct pay permit holder shall  
26 follow the provisions of subsection (c) in apportioning the tax due on a  
27 digital good or a service that will be concurrently available for use in more  
28 than one jurisdiction.

29 (f) ~~Except as provided in section 11, the~~ **The** *provisions of this section*  
30 *shall not be effective for the period commencing on the effective date of*  
31 *this act, and ending on the date that legislation enacted by the United*  
32 *States Congress becomes effective that authorizes the secretary of revenue*  
33 *to require some out-of-state, remote sellers lacking physical presence in*  
34 *this state to collect and remit state and local sales or use taxes.*

35 Sec. 8. K.S.A. 2003 Supp. 79-3672 is hereby amended to read as  
36 follows: 79-3672. (a) (1) Notwithstanding the provisions of K.S.A. 2003  
37 Supp. 79-3670 and amendments thereto, a purchaser of direct mail that  
38 is not a holder of a direct pay permit shall provide to the seller in con-  
39 junction with the purchase either a direct mail form or information to  
40 show the jurisdictions to which the direct mail is delivered to recipients.

41 (2) Upon receipt of the direct mail form, the seller is relieved of all  
42 obligations to collect, pay or remit the applicable tax and the purchaser  
43 is obligated to pay or remit the applicable tax on a direct pay basis. A

1 direct mail form shall remain in effect for all future sales of direct mail  
2 by the seller to the purchaser until it is revoked in writing.

3 (3) Upon receipt of information from the purchaser showing the ju-  
4 risdications to which the direct mail is delivered to recipients, the seller  
5 shall collect the tax according to the delivery information provided by the  
6 purchaser. In the absence of bad faith, the seller is relieved of any further  
7 obligation to collect tax on any transaction where the seller has collected  
8 tax pursuant to the delivery information provided by the purchaser.

9 (b) If the purchaser of direct mail does not have a direct pay permit  
10 and does not provide the seller with either a direct mail form or delivery  
11 information, as required by subsection (a), the seller shall collect the tax  
12 according to subsection (a)(5) of K.S.A. 2003 Supp. 79-3670 and amend-  
13 ments thereto. Nothing in this subsection shall limit a purchaser's obli-  
14 gation for sales or use tax to any state to which the direct mail is delivered.

15 (c) If a purchaser of direct mail provides the seller with documen-  
16 tation of direct pay authority, the purchaser shall not be required to pro-  
17 vide a direct mail form or delivery information to the seller.

18 (d) ~~Except as provided in section 11, the~~ **The** provisions of this section  
19 shall not be effective for the period commencing on the effective date of  
20 this act, and ending on the date that legislation enacted by the United  
21 States Congress becomes effective that authorizes the secretary of revenue  
22 to require some out-of-state, remote sellers lacking physical presence in  
23 this state to collect and remit state and local sales or use taxes.

24 Sec. 9. K.S.A. 2003 Supp. 79-3673 is hereby amended to read as  
25 follows: 79-3673. (a) Except for the defined telecommunication services  
26 in subsection (c), the sale of telecommunication service sold on a call-by-  
27 call basis shall be sourced to each level of taxing jurisdiction where the  
28 call originates and terminates in that jurisdiction or each level of taxing  
29 jurisdiction where the call either originates or terminates and in which  
30 the service address is also located.

31 (b) Except for the defined telecommunication services in subsection  
32 (c), a sale of telecommunications services sold on a basis other than a call-  
33 by-call basis, is sourced to the customer's place of primary use.

34 (c) The sale of the following telecommunication services shall be  
35 sourced to each level of taxing jurisdiction as follows: (1) A sale of mobile  
36 communications services other than air-to-ground radiotelephone service  
37 and prepaid calling service, is sourced to the customer's place of primary  
38 use as required by the mobile telecommunications sourcing act;

39 (2) a sale of post-paid calling service is sourced to the origination  
40 point of the telecommunications signal as first identified by either the  
41 seller's telecommunications system, or information received by the seller  
42 from its service provider, where the system used to transport such signals  
43 is not that of the seller; and

1 (3) a sale of prepaid calling service is sourced in accordance with  
2 K.S.A. 2003 Supp. 79-3670 and amendments thereto, except that in the  
3 case of a sale of mobile telecommunications service that is a prepaid  
4 telecommunications service, the rule provided in subsection (a)(5) of  
5 K.S.A. 2003 Supp. 79-3670 and amendments thereto shall include as an  
6 option the location associate with the mobile telephone number.

7 (d) A sale of a private communication service is sourced as follows:

8 (1) Service for a separate charge related to a customer channel termina-  
9 tion point is sourced to each level of jurisdiction in which such customer  
10 channel termination point is located;

11 (2) service where all customer termination points are located entirely  
12 within one jurisdiction or levels of jurisdiction is sourced in such juris-  
13 diction in which the customer channel termination points are located;

14 (3) service for segments of a channel between two customer channel  
15 termination points located in different jurisdictions and which segment  
16 of channel are separately charged is sourced 50% in each level of juris-  
17 diction in which the customer channel termination points are located; and

18 (4) service for segments of a channel located in more than one juris-  
19 diction or levels of jurisdiction and which segments are not separately  
20 billed is sourced in each jurisdiction based on the percentage determined  
21 by dividing the number of customer channel termination points in such  
22 jurisdiction by the total number of customer channel termination points.

23 (e) As used in this section: (1) “Air-to-ground radiotelephone service”  
24 means a radio service, as that term is defined in 47 CFR 22.99, in which  
25 common carriers are authorized to offer and provide radio telecommu-  
26 nications service for hire to subscribers in aircraft;

27 (2) “call-by-call basis” means any method of charging for telecom-  
28 munications services where the price is measured by individual calls;

29 (3) “communications channel” means a physical or virtual path of  
30 communications over which signals are transmitted between or among  
31 customer channel termination points;

32 (4) “customer” means the person or entity that contracts with the  
33 seller of telecommunications services. If the end user of telecommuni-  
34 cations services is not the contracting party, the end user of the telecom-  
35 munications service is the customer of the telecommunication service,  
36 but this sentence only applies for the purpose of sourcing sales of tele-  
37 communications services under this section. Customer does not include  
38 a reseller of telecommunications service or for mobile telecommunica-  
39 tions service of a serving carrier under an agreement to serve the cus-  
40 tomer outside the home service provider’s licensed service area;

41 (5) “customer channel termination point” means the location where  
42 the customer either inputs or receives the communication;

43 (6) “end user” means the person who utilizes the telecommunication

1 service. In the case of an entity, end user means the individual who utilizes  
2 the services on behalf of the entity;

3 (7) “home service provider” means the same as that term in defined  
4 in section 124(5) of Public Law 106-252 (mobile telecommunications  
5 sourcing act);

6 (8) “mobile telecommunications service” means the same as that  
7 term is defined in section 124(5) of Public Law 106-252 (mobile telecom-  
8 munications sourcing act);

9 (9) “place of primary use” means the street address representative of  
10 where the customer’s use of the telecommunications service primarily  
11 occurs, which must be the residential street address or the primary busi-  
12 ness street address of the customer. In the case of mobile telecommu-  
13 nications services, place of primary use must be within the licensed serv-  
14 ice area of the home service provider;

15 (10) “post-paid calling service” means the telecommunications servi-  
16 ce obtained by making a payment on a call-by-call basis either through  
17 the use of a credit card or payment mechanism such as a bank card, travel  
18 card, credit card or debit card, or by charge made to which a telephone  
19 number which is not associated with the origination or termination of the  
20 telecommunications service. A post-paid calling service includes a tele-  
21 communications service that would be a prepaid calling service except it  
22 is not exclusively a telecommunication service;

23 (11) “prepaid calling service” means the right to access exclusively  
24 telecommunications services, which must be paid for in advance and  
25 which enables the origination of calls using an access number or author-  
26 ization code, whether manually or electronically dialed, and that is sold  
27 in predetermined units or dollars of which the number declines with use  
28 in a known amount;

29 (12) “private communication service” means a telecommunication  
30 service that entitles the customer to exclusive or priority use of a com-  
31 munications channel or group of channels between or among termination  
32 points, regardless of the manner in which such channel or channels are  
33 connected, and includes switching capacity, extension lines, stations and  
34 any other associated services that are provided in connection with the use  
35 of such channel or channels; and

36 (13) “service address” means: (A) The location of the telecommuni-  
37 cations equipment to which a customer’s call is charged and from which  
38 the call originates or terminates, regardless of where the call is billed or  
39 paid;

40 (B) if the location in subsection (13)(A) is not known, service address  
41 means the origination point of the signal of the telecommunications servi-  
42 ces first identified by either the seller’s telecommunications system or in  
43 information received by the seller from its service provider, where the



1 system used to transport such signals is not that of the seller; and  
2 (C) if the location in subsections (13)(A) and (13)(B) are not known,  
3 the service address means the location of the customer's place of primary  
4 use.

5 (f) ~~Except as provided in section 11, the~~ **The provisions of this section**  
6 **shall not be effective for the period commencing on the effective date of**  
7 **this act, and ending on the date that legislation enacted by the United**  
8 **States Congress becomes effective that authorizes the secretary of revenue**  
9 **to require some out-of-state, remote sellers lacking physical presence in**  
10 **this state to collect and remit state and local sales or use taxes.**

11 Sec. 10. K.S.A. 2003 Supp. 79-3682 is hereby amended to read as  
12 follows: 79-3682. (a) The provisions of K.S.A. 2003 Supp. 79-3666  
13 through 79-3682 and amendments thereto shall be known and may be  
14 cited as the streamlined sales and use tax agreement conformity act.

15 (b) ~~Except as otherwise specifically provided,~~ the provisions of K.S.A.  
16 2003 Supp. 79-3666 through 79-3682 shall be effective on and after July  
17 1, 2003.

18 ~~New Sec. 11. Commencing on the effective date of this act and end-~~  
19 ~~ing two years thereafter, for any retailer who is sourcing retail sales of~~  
20 ~~such retailer's products pursuant to the destination based sourcing rules~~  
21 ~~provided for in K.S.A. 12-191, as amended by 2003 House Bill No. 2005,~~  
22 ~~and K.S.A. 2003 Supp. 79-3670, 79-3671, 79-3672 and 79-3673, as en-~~  
23 ~~acted by 2003 House Bill No. 2005, prior to the effective date of this act,~~  
24 ~~such retailer shall be deemed to be in compliance with the sourcing pro-~~  
25 ~~visions of this act.~~

26 ~~New Sec. 12.~~ **11.** The legislature of the state of Kansas shall not  
27 enact legislation to provide for reasonable compensation for expenses  
28 incurred by out-of-state, remote sellers related to the administration, col-  
29 lection and remittance of sales and use taxes and the tax processing costs  
30 of such out-of-state, remote sellers pursuant to the requirements of leg-  
31 islation enacted by the United States Congress, unless such legislation  
32 enacted by the legislature of the state of Kansas also provides for reason-  
33 able compensation for expenses incurred by in-state sellers related to the  
34 administration, collection and remittance of sales and use taxes and the  
35 tax processing costs of in-state sellers in an amount equal to that provided  
36 for such out-of-state, remote sellers.

37 **[Sec. 12. K.S.A. 2003 Supp. 79-3607 is hereby amended to**  
38 **read as follows: 79-3607. (a) Retailers shall make returns to the**  
39 **director at the times prescribed by this section upon forms pre-**  
40 **scribed and furnished by the director stating: (1) The name and**  
41 **address of the retailer; (2) the total amount of gross sales of all**  
42 **tangible personal property and taxable services rendered by the**  
43 **retailer during the period for which the return is made; (3) the**

1 total amount received during the period for which the return is  
2 made on charge and time sales of tangible personal property made  
3 and taxable services rendered prior to the period for which the  
4 return is made; (4) deductions allowed by law from such total  
5 amount of gross sales and from total amount received during the  
6 period for which the return is made on such charge and time sales;  
7 (5) receipts during the period for which the return is made from  
8 the total amount of sales of tangible personal property and taxable  
9 services rendered during such period in the course of such busi-  
10 ness, after deductions allowed by law have been made; (6) receipts  
11 during the period for which the return is made from charge and  
12 time sales of tangible personal property made and taxable services  
13 rendered prior to such period in the course of such business, after  
14 deductions allowed by law have been made; (7) gross receipts dur-  
15 ing the period for which the return is made from sales of tangible  
16 personal property and taxable services rendered in the course of  
17 such business upon the basis of which the tax is imposed. The re-  
18 turn shall include such other pertinent information as the director  
19 may require. In making such return, the retailer shall determine  
20 the market value of any consideration, other than money, received  
21 in connection with the sale of any tangible personal property in  
22 the course of the business and shall include such value in the re-  
23 turn. Such value shall be subject to review and revision by the  
24 director as hereinafter provided. Refunds made by the retailer  
25 during the period for which the return is made on account of tan-  
26 gible personal property returned to the retailer shall be allowed  
27 as a deduction under subdivision (4) of this section in case the  
28 retailer has theretofore included the receipts from such sale in a  
29 return made by such retailer and paid taxes therein imposed by  
30 this act. The retailer shall, at the time of making such return, pay  
31 to the director the amount of tax herein imposed, except as oth-  
32 erwise provided in this section. The director may extend the time  
33 for making returns and paying the tax required by this act for any  
34 period not to exceed 60 days under such rules and regulations as  
35 the secretary of revenue may prescribe. When the total tax for  
36 which any retailer is liable under this act, does not exceed the sum  
37 of \$80 in any calendar year, the retailer shall file an annual return  
38 on or before January 25 of the following year. When the total tax  
39 liability does not exceed ~~\$1,600~~ \$3,200 in any calendar year, the  
40 retailer shall file returns quarterly on or before the 25th day of  
41 the month following the end of each calendar quarter. When the  
42 total tax liability exceeds ~~\$1,600~~ \$3,200 in any calendar year, the  
43 retailer shall file a return for each month on or before the 25th

1 day of the following month. When the total tax liability exceeds  
2 \$32,000 in any calendar year, the retailer shall be required to pay  
3 the sales tax liability for the first 15 days of each month to the  
4 director on or before the 25th day of that month. Any such pay-  
5 ment shall accompany the return filed for the preceding month. A  
6 retailer will be considered to have complied with the requirements  
7 to pay the first 15 days' liability for any month if, on or before the  
8 25th day of that month, the retailer paid 90% of the liability for  
9 that fifteen-day period, or 50% of such retailer's liability in the  
10 immediate preceding calendar year for the same month as the  
11 month in which the fifteen-day period occurs computed at the rate  
12 applicable in the month in which the fifteen-day period occurs,  
13 and, in either case, paid any underpayment with the payment re-  
14 quired on or before the 25th day of the following month. Such  
15 retailers shall pay their sales tax liabilities for the remainder of  
16 each such month at the time of filing the return for such month.  
17 Determinations of amounts of liability in a calendar year for pur-  
18 poses of determining filing requirements shall be made by the di-  
19 rector upon the basis of amounts of liability by those retailers dur-  
20 ing the preceding calendar year or by estimates in cases of retailers  
21 having no previous sales tax histories. The director is hereby au-  
22 thorized to modify the filing schedule for any retailer when it is  
23 apparent that the original determination was inaccurate.

24 [(b) All model 1, model 2 and model 3 sellers are required to  
25 file returns electronically. Any model 1, model 2 or model 3 seller  
26 may submit its sales and use tax returns in a simplified format  
27 approved by the director. Any seller that is registered under the  
28 agreement, which does not have a legal requirement to register in  
29 this state, and is not a model 1, model 2 or model 3 seller, may  
30 submit its sales and use tax returns as follows: (1) Upon registra-  
31 tion, the director shall provide to the seller the returns required;  
32 [(2) seller shall file a return anytime within one year of the  
33 month of initial registration, and future returns are required on  
34 an annual basis in succeeding years; and

35 [(3) in addition to the returns required in subsection (b)(2),  
36 sellers are required to submit returns in the month following any  
37 month in which they have accumulated state and local sales tax  
38 funds for this state in the amount of \$1,600 or more.

39 [Sec. 13. K.S.A. 2003 Supp. 79-3615 is hereby amended to  
40 read as follows: 79-3615. (a) If any taxpayer shall fail to pay the tax  
41 required under this act at the time required by or under the pro-  
42 visions of this act, there shall be added to the unpaid balance of  
43 the tax, interest at the rate per month prescribed by subsection (a)

1 of K.S.A. 79-2968 and amendments thereto from the date the tax  
2 was due until paid.

3 [(b) For all taxable years ending prior to January 1, 2002, if any  
4 taxpayer due to negligence or intentional disregard fails to file a  
5 return or pay the tax due at the time required by or under the  
6 provisions of this act, there shall be added to the tax a penalty in  
7 an amount equal to 10% of the unpaid balance of tax due.

8 [(c) For all taxable years ending prior to January 1, 2002, if any  
9 person fails to make a return, or to pay any tax, within six months  
10 from the date the return or tax was due, except in the case of an  
11 extension of time granted by the secretary of revenue or the sec-  
12 retary's designee, there shall be added to the tax due a penalty  
13 equal to 25% of the unpaid balance of such tax due. Notwithstand-  
14 ing the foregoing, in the event an assessment is issued following a  
15 field audit for any period for which a return was filed by the tax-  
16 payer and all of the tax was paid pursuant to such return, a penalty  
17 shall be imposed for the period included in the assessment in the  
18 amount of 10% of the unpaid balance of tax due shown in the  
19 notice of assessment. If after review of a return for any period  
20 included in the assessment, the secretary or secretary's designee  
21 determines that the underpayment of tax was due to the failure of  
22 the taxpayer to make a reasonable attempt to comply with the pro-  
23 visions of this act, such penalty shall be imposed for the period  
24 included in the assessment in the amount of 25% of the unpaid  
25 balance of tax due.

26 [(d) For all taxable years ending after December 31, 2001, if  
27 any taxpayer fails to file a return or pay the tax if one is due, at the  
28 time required by or under the provisions of this act, there shall be  
29 added to the tax an additional amount equal to 1% of the unpaid  
30 balance of the tax due for each month or fraction thereof during  
31 which such failure continues, not exceeding 24% in the aggregate,  
32 plus interest at the rate prescribed by subsection (a) of K.S.A. 79-  
33 2968, and amendments thereto, from the date the tax was due until  
34 paid. Notwithstanding the foregoing, in the event an assessment is  
35 issued following a field audit for any period for which a return was  
36 filed by the taxpayer and all of the tax was paid pursuant to such  
37 return, a penalty shall be imposed for the period included in the  
38 assessment in an amount of 1% per month not exceeding 10% of  
39 the unpaid balance of tax due shown in the notice of assessment.  
40 If after review of a return for any period included in the assess-  
41 ment, the secretary or secretary's designee determines that the  
42 underpayment of tax was due to the failure of the taxpayer to make  
43 a reasonable attempt to comply with the provisions of this act, such

1 penalty shall be imposed for the period included in the assessment  
2 in the amount of 25% of the unpaid balance of tax due.

3 [(e) If any taxpayer, with fraudulent intent, fails to pay any tax  
4 or make, render or sign any return, or to supply any information,  
5 within the time required by or under the provisions of this act,  
6 there shall be added to the tax a penalty in an amount equal to  
7 50% of the unpaid balance of tax due.

8 [(f) Penalty or interest applied under the provisions of subsec-  
9 tions (a) and (d) shall be in addition to the penalty added under  
10 any other provisions of this section, but the provisions of subsec-  
11 tions (b) and (c) shall be mutually exclusive of each other.

12 [(g) (1) Whenever the secretary or the secretary's designee de-  
13 termines that the failure of the taxpayer to comply with the pro-  
14 visions of subsections (a), (b), (c) and (d) of this section was due to  
15 reasonable causes, the secretary or the secretary's designee may  
16 waive or reduce any of the penalties and may reduce the interest  
17 rate to the underpayment rate prescribed and determined for the  
18 applicable period under section 6621 of the federal internal rev-  
19 enue code as in effect on January 1, 1994, upon making a record  
20 of the reasons therefor.

21 [(2) Whenever the secretary or the secretary's designee determines  
22 that a taxpayer has additional liability and such additional liability was  
23 due to reasonable error on the part of the taxpayer in implementing or  
24 applying the destination-based sourcing rules as provided in K.S.A. 2003  
25 Supp. 79-3670 et seq., and amendments thereto, the secretary or the sec-  
26 retary's designee may waive any penalties and interest related to such  
27 additional liability, upon making a record of the reasons therefor.

28 [(h) In addition to all other penalties provided by this section,  
29 any person who willfully fails to make a return or to pay any tax  
30 imposed under the Kansas retailers' sales tax act, or who makes a  
31 false or fraudulent return, or fails to keep any books or records  
32 prescribed by this act, or who willfully violates any regulations of  
33 the secretary of revenue, for the enforcement and administration  
34 of this act, or who aids and abets another in attempting to evade  
35 the payment of any tax imposed by this act, or who violates any  
36 other provision of this act, shall, upon conviction thereof, be fined  
37 not less than \$500, nor more than \$10,000, or be imprisoned in  
38 the county jail not less than one month, nor more than six months,  
39 or be both so fined and imprisoned, in the discretion of the court.

40 [(i) No penalty assessed hereunder shall be collected if the tax-  
41 payer has had the tax abated on appeal, and any penalty collected  
42 upon such tax shall be refunded.

43 [Sec. 14. K.S.A. 2003 Supp. 79-3706 is hereby amended to

1 read as follows: 79-3706. (a) Each retailer or person subject to the  
2 provisions of this act shall make remittances of the tax imposed by  
3 K.S.A. 79-3703, and amendments thereto, and file returns in ac-  
4 cordance with the provisions of K.S.A. 79-3607 and amendments  
5 thereto, except that the time schedule for remitting tax and filing  
6 returns shall be determined on the basis of calendar year compen-  
7 sating tax liability in lieu of calendar year sales tax liability. Returns  
8 shall show in detail the total quantity of tangible personal property  
9 sold by any retailer or used, stored or consumed by any person  
10 within the state during the period for which the return is filed  
11 subject to the tax herein imposed, and such other information as  
12 the director may deem pertinent. The director may, upon request  
13 and a proper showing of the necessity therefor, grant an extension  
14 of time not to exceed 60 days for making any return and payment.  
15 Returns shall be signed by the retailer or such retailer's duly au-  
16 thorized agent, and must be certified by such retailer to be correct.

17 [(b) If any taxpayer fails to pay the tax required under the act  
18 of which this section is amendatory at the time required by or  
19 under the provisions of the act of which this section is amendatory,  
20 there shall be added to the unpaid balance of the tax, interest at  
21 the rate per month prescribed by subsection (a) of K.S.A. 79-2968,  
22 and amendments thereto, from the date the tax was due until paid.

23 [(c) For all taxable years ending prior to January 1, 2002, if any  
24 taxpayer due to negligence or intentional disregard fails to file a  
25 return or pay the tax due at the time required by or under the  
26 provisions of this section, there shall be added to the tax a penalty  
27 in an amount equal to 10% of the unpaid balance of tax due.

28 [(d) For all taxable years ending prior to January 1, 2002, if any  
29 person fails to make a return, or to pay any tax, within six months  
30 from the date the return or tax was due, except in the case of an  
31 extension of time granted by the secretary of revenue or the sec-  
32 retary's designee, there shall be added to the tax due a penalty  
33 equal to 25% of the unpaid balance of such tax due.

34 [(e) For all taxable years ending after December 31, 2001, if  
35 any taxpayer fails to file a return or pay the tax if one is due, at the  
36 time required by or under the provisions of this act, there shall be  
37 added to the tax an additional amount equal to 1% of the unpaid  
38 balance of the tax due for each month or fraction thereof during  
39 which such failure continues, not exceeding 24% in the aggregate,  
40 plus interest at the rate prescribed by subsection (a) of K.S.A. 79-  
41 2968, and amendments thereto, from the date the tax was due until  
42 paid. Notwithstanding the foregoing, in the event an assessment is  
43 issued following a field audit for any period for which a return was

1 filed by the taxpayer and all of the tax was paid pursuant to such  
2 return, a penalty shall be imposed for the period included in the  
3 assessment in an amount of 1% per month not exceeding 10% of  
4 the unpaid balance of tax due shown in the notice of assessment.  
5 If after review of a return for any period included in the assess-  
6 ment, the secretary or secretary's designee determines that the  
7 underpayment of tax was due to the failure of the taxpayer to make  
8 a reasonable attempt to comply with the provisions of this act, such  
9 penalty shall be imposed for the period included in the assessment  
10 in the amount of 25% of the unpaid balance of tax due.

11 [(f) If any taxpayer, with fraudulent intent, fails to pay any tax  
12 or make, render or sign any return, or to supply any information,  
13 within the time required by or under the provisions of this section,  
14 there shall be added to the tax a penalty in an amount equal to  
15 50% of the unpaid balance of tax due.

16 [(g) Penalty or interest applied under the provisions of subsec-  
17 tions (b) and (e) shall be in addition to the penalty added under  
18 any other provisions of this section, but the provisions of subsec-  
19 tions (c) and (d) shall be mutually exclusive of each other.

20 [(h) (1) Whenever the secretary of revenue or the secretary's  
21 designee determines that the failure of the taxpayer to comply with  
22 the provisions of subsections (b), (c), (d) and (e) was due to reason-  
23 able causes, the secretary or the secretary's designee may waive  
24 or reduce any of the penalties and may reduce the interest rate to  
25 the underpayment rate prescribed and determined for the appli-  
26 cable period under section 6621 of the federal internal revenue  
27 code as in effect on January 1, 1994 upon making a record of the  
28 reasons therefor.

29 [(2) Whenever the secretary or the secretary's designee determines  
30 that a taxpayer has additional liability and such additional liability was  
31 due to reasonable error on the part of the taxpayer in implementing and  
32 applying the destination-based sourcing rules as provided in K.S.A. 2003  
33 Supp. 79-3670 et seq., and amendments thereto, the secretary or the sec-  
34 retary's designee may waive any penalties and interest related to such  
35 additional liability, upon making a record of the reasons therefor.

36 [(i) In addition to all other penalties provided by this section,  
37 any person who willfully fails to make a return or to pay any tax  
38 imposed under the Kansas compensating tax act, or who makes a  
39 false or fraudulent return, or fails to keep any books or records  
40 prescribed by the Kansas compensating tax act, or who willfully  
41 violates any regulations of the secretary of revenue, for the en-  
42 forcement and administration of the Kansas compensating tax act,  
43 or who aids and abets another in attempting to evade the payment

1 of any tax imposed by the Kansas compensating tax act, or who  
2 violates any other provision of the Kansas compensating tax act,  
3 shall, upon conviction thereof, be fined not less than \$100 nor  
4 more than \$1,000, or be imprisoned in the county jail not less than  
5 one month nor more than six months, or be both so fined and  
6 imprisoned, in the discretion of the court.

7 [(j) No penalty assessed hereunder shall be collected if the tax-  
8 payer has had the tax abated on appeal, and any penalty collected  
9 upon such tax shall be refunded.]

10 [New Sec. 15. Retailers who: (a) Are required to file returns  
11 and remit retailer's sales or use tax monthly or quarterly; (b) have  
12 total state and local retailer's sales or use tax liability of less than  
13 \$20,000 for all reporting periods in the previous calendar year;  
14 and (c) report and remit local retailer's sales or use tax to multiple  
15 taxing jurisdictions in this state on such retailer's returns pursuant  
16 to the destination-based sourcing provisions as provided by K.S.A.  
17 2003 Supp. 79-3670 *et seq.*, and amendments thereto, are entitled  
18 to a payment from the sales tax refund fund of an amount not to  
19 exceed \$1,000 for reimbursement of costs such retailer has in-  
20 curred during the period commencing May 22, 2003, and ending  
21 July 1, 2004, to purchase computer hardware or other equipment,  
22 computer software, or modification of computer software neces-  
23 sary for such retailer to implement such destination-based sourc-  
24 ing provisions. The reimbursement shall not include any payroll  
25 expense of the retailer. Any retailer seeking such reimbursement  
26 payment shall file a claim with the secretary not later than Decem-  
27 ber 31, 2004, in the manner required by the secretary. Such claim  
28 shall contain documentation sufficient to prove that the costs were  
29 incurred and such costs qualify for reimbursement, as determined  
30 by the secretary.]

31 [New Sec. 16. On and after the date that legislation enacted  
32 by the United States congress becomes effective that authorizes  
33 the secretary of revenue to require some out-of-state, remote sell-  
34 ers lacking physical presence in this state to collect and remit state  
35 and local sales or use taxes, for retailers who have total state and  
36 local retailer's sales or uses tax liability of less than \$20,000 for all  
37 reporting periods in the previous calendar year there shall be al-  
38 lowed as a credit to each remittance of sales and compensating use  
39 tax pursuant to the provisions of the Kansas retailers' sales tax and  
40 the Kansas compensating tax acts required to be made by such  
41 retailer, an amount equal to 0.5% of such remittance.]

42 Sec. ~~13-12~~ [17]. K.S.A. 2003 Supp. 12-191, 79-3603, 79-3603c, [79-  
43 3607, 79-3615,] 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672,



- 1 79-3673 ~~and~~[,] 79-3682 [**and 79-3706**] are hereby repealed.
- 2 Sec. ~~14~~ ~~13~~ [**18**]. This act shall take effect and be in force from and
- 3 after its publication in the Kansas register.