

SENATE BILL No. 344

By Committee on Education

1-23

AN ACT concerning the retailers' sales tax; relating to exemptions therefrom; amending K.S.A. 2003 Supp. 79-3606 and repealing the existing section.

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

Section 1. K.S.A. 2003 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 and malt products as defined by K.S.A. 79-3817 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 a public or private elementary or secondary school or public or private

1 nonprofit educational institution *or any group or organization sponsored*
2 *by such school or institution* and used primarily by such school ~~or~~, insti-
3 tution, *group or organization* for nonsectarian programs and activities
4 provided or sponsored by such school ~~or~~, institution, *group or organiza-*
5 *tion* or in the erection, repair or enlargement of buildings to be used for
6 such purposes. The exemption herein provided shall not apply to erection,
7 construction, repair, enlargement or equipment of buildings used pri-
8 marily for human habitation; *and all sales of tangible personal property*
9 *or services by or on behalf of any public or private elementary school or*
10 *public or private nonprofit educational institution or any group or or-*
11 *ganization sponsored by such school or institution if the proceeds of such*
12 *sales are used primarily by such school, institution, group or organization*
13 *for nonsectarian programs and activities provided or sponsored by such*
14 *school, institution, group or organization;*

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

1 constructing, equipping, reconstructing, maintaining, repairing, enlarg-
2 ing, furnishing or remodeling facilities, it shall obtain from the state and
3 furnish to the contractor an exemption certificate for the project involved,
4 and the contractor may purchase materials for incorporation in such pro-
5 ject. The contractor shall furnish the number of such certificate to all
6 suppliers from whom such purchases are made, and such suppliers shall
7 execute invoices covering the same bearing the number of such certifi-
8 cate. Upon completion of the project the contractor shall furnish to the
9 political subdivision, district described in subsection (s), hospital or public
10 hospital authority, school or educational institution concerned a sworn
11 statement, on a form to be provided by the director of taxation, that all
12 purchases so made were entitled to exemption under this subsection. As
13 an alternative to the foregoing procedure, any such contracting entity may
14 apply to the secretary of revenue for agent status for the sole purpose of
15 issuing and furnishing project exemption certificates to contractors pur-
16 suant to rules and regulations adopted by the secretary establishing con-
17 ditions and standards for the granting and maintaining of such status. All
18 invoices shall be held by the contractor for a period of five years and shall
19 be subject to audit by the director of taxation. If any materials purchased
20 under such a certificate are found not to have been incorporated in the
21 building or other project or not to have been returned for credit or the
22 sales or compensating tax otherwise imposed upon such materials which
23 will not be so incorporated in the building or other project reported and
24 paid by such contractor to the director of taxation not later than the 20th
25 day of the month following the close of the month in which it shall be
26 determined that such materials will not be used for the purpose for which
27 such certificate was issued, the political subdivision, district described in
28 subsection (s), hospital or public hospital authority, school or educational
29 institution concerned shall be liable for tax on all materials purchased for
30 the project, and upon payment thereof it may recover the same from the
31 contractor together with reasonable attorney fees. Any contractor or any
32 agent, employee or subcontractor thereof, who shall use or otherwise
33 dispose of any materials purchased under such a certificate for any pur-
34 pose other than that for which such a certificate is issued without the
35 payment of the sales or compensating tax otherwise imposed upon such
36 materials, shall be guilty of a misdemeanor and, upon conviction therefor,
37 shall be subject to the penalties provided for in subsection (g) of K.S.A.
38 79-3615, and amendments thereto;

39 (e) all sales of tangible personal property or services purchased by a
40 contractor for the erection, repair or enlargement of buildings or other
41 projects for the government of the United States, its agencies or instru-
42 mentalities, which would be exempt from taxation if purchased directly
43 by the government of the United States, its agencies or instrumentalities.

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

27 (f) tangible personal property purchased by a railroad or public utility
28 for consumption or movement directly and immediately in interstate
29 commerce;

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

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

43 (i) the lease or rental of all films, records, tapes, or any type of sound

1 or picture transcriptions used by motion picture exhibitors;

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

7 (k) any motor vehicle, semitrailer or pole trailer, as such terms are
8 defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and
9 delivered in this state to a bona fide resident of another state, which motor
10 vehicle, semitrailer, pole trailer or aircraft is not to be registered or based
11 in this state and which vehicle, semitrailer, pole trailer or aircraft will not
12 remain in this state more than 10 days;

13 (l) all isolated or occasional sales of tangible personal property, serv-
14 ices, substances or things, except isolated or occasional sale of motor
15 vehicles specifically taxed under the provisions of subsection (o) of K.S.A.
16 79-3603 and amendments thereto;

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

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

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

41 (p) all sales of drugs dispensed pursuant to a prescription order by a
42 licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-
43 1626, and amendments thereto. As used in this subsection, "drug" means

1 a compound, substance or preparation and any component of a com-
2 pound, substance or preparation, other than food and food ingredients,
3 dietary supplements or alcoholic beverages, recognized in the official
4 United States pharmacopoeia, official homeopathic pharmacopoeia of the
5 United States or official national formulary, and supplement to any of
6 them, intended for use in the diagnosis, cure, mitigation, treatment or
7 prevention of disease or intended to affect the structure or any function
8 of the body;

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

12 (r) all sales of prosthetic devices and mobility enhancing equipment
13 prescribed in writing by a person licensed to practice the healing arts,
14 dentistry or optometry. For the purposes of this subsection: (1) “Mobility
15 enhancing equipment” means equipment including repair and replace-
16 ment parts to same, but does not include durable medical equipment,
17 which is primarily and customarily used to provide or increase the ability
18 to move from one place to another and which is appropriate for use either
19 in a home or a motor vehicle; is not generally used by persons with normal
20 mobility; and does not include any motor vehicle or equipment on a motor
21 vehicle normally provided by a motor vehicle manufacturer; and (2)
22 “prosthetic device” means a replacement, corrective or supportive device
23 including repair and replacement parts for same worn on or in the body
24 to artificially replace a missing portion of the body, prevent or correct
25 physical deformity or malfunction or support a weak or deformed portion
26 of the body;

27 (s) except as provided in K.S.A. 2003 Supp. 82a-2101, and amend-
28 ments thereto, all sales of tangible personal property or services pur-
29 chased directly or indirectly by a groundwater management district or-
30 ganized or operating under the authority of K.S.A. 82a-1020 *et seq.* and
31 amendments thereto, by a rural water district organized or operating un-
32 der the authority of K.S.A. 82a-612, and amendments thereto, or by a
33 water supply district organized or operating under the authority of K.S.A.
34 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto,
35 which property or services are used in the construction activities, opera-
36 tion or maintenance of the district;

37 (t) all sales of farm machinery and equipment or aquaculture ma-
38 chinery and equipment, repair and replacement parts therefor and serv-
39 ices performed in the repair and maintenance of such machinery and
40 equipment. For the purposes of this subsection the term “farm machinery
41 and equipment or aquaculture machinery and equipment” shall include
42 machinery and equipment used in the operation of Christmas tree farm-
43 ing but shall not include any passenger vehicle, truck, truck tractor, trailer,

1 semitrailer or pole trailer, other than a farm trailer, as such terms are
2 defined by K.S.A. 8-126 and amendments thereto. Each purchaser of
3 farm machinery and equipment or aquaculture machinery and equipment
4 exempted herein must certify in writing on the copy of the invoice or
5 sales ticket to be retained by the seller that the farm machinery and
6 equipment or aquaculture machinery and equipment purchased will be
7 used only in farming, ranching or aquaculture production. Farming or
8 ranching shall include the operation of a feedlot and farm and ranch work
9 for hire and the operation of a nursery;

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

13 (v) all sales of food products to any contractor for use in preparing
14 meals for delivery to homebound elderly persons over 60 years of age and
15 to homebound disabled persons or to be served at a group-sitting at a
16 location outside of the home to otherwise homebound elderly persons
17 over 60 years of age and to otherwise homebound disabled persons, as
18 all or part of any food service project funded in whole or in part by
19 government or as part of a private nonprofit food service project available
20 to all such elderly or disabled persons residing within an area of service
21 designated by the private nonprofit organization, and all sales of food
22 products for use in preparing meals for consumption by indigent or home-
23 less individuals whether or not such meals are consumed at a place des-
24 ignated for such purpose;

25 (w) all sales of natural gas, electricity, heat and water delivered
26 through mains, lines or pipes: (1) To residential premises for noncom-
27 mercial use by the occupant of such premises; (2) for agricultural use and
28 also, for such use, all sales of propane gas; (3) for use in the severing of
29 oil; and (4) to any property which is exempt from property taxation pur-
30 suant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph,
31 "severing" shall have the meaning ascribed thereto by subsection (k) of
32 K.S.A. 79-4216, and amendments thereto. For all sales of natural gas,
33 electricity and heat delivered through mains, lines or pipes pursuant to
34 the provisions of subsection (w)(1) and (w)(2), the provisions of this sub-
35 section shall expire on December 31, 2005;

36 (x) all sales of propane gas, LP-gas, coal, wood and other fuel sources
37 for the production of heat or lighting for noncommercial use of an oc-
38 cupant of residential premises occurring prior to January 1, 2006;

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

43 (z) all sales of tangible personal property and services purchased di-

1 rectly by a port authority or by a contractor therefor as provided by the
2 provisions of K.S.A. 12-3418 and amendments thereto;

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

9 (bb) all sales of used mobile homes or manufactured homes. As used
10 in this subsection: (1) "Mobile homes" and "manufactured homes" shall
11 have the meanings ascribed thereto by K.S.A. 58-4202 and amendments
12 thereto; and (2) "sales of used mobile homes or manufactured homes"
13 means sales other than the original retail sale thereof;

14 (cc) all sales of tangible personal property or services purchased for
15 the purpose of and in conjunction with constructing, reconstructing, en-
16 larging or remodeling a business or retail business which meets the
17 requirements established in K.S.A. 74-50,115 and amendments thereto,
18 and the sale and installation of machinery and equipment purchased for
19 installation at any such business or retail business. When a person shall
20 contract for the construction, reconstruction, enlargement or remodeling
21 of any such business or retail business, such person shall obtain from the
22 state and furnish to the contractor an exemption certificate for the project
23 involved, and the contractor may purchase materials, machinery and
24 equipment for incorporation in such project. The contractor shall furnish
25 the number of such certificates to all suppliers from whom such purchases
26 are made, and such suppliers shall execute invoices covering the same
27 bearing the number of such certificate. Upon completion of the project
28 the contractor shall furnish to the owner of the business or retail business
29 a sworn statement, on a form to be provided by the director of taxation,
30 that all purchases so made were entitled to exemption under this subsec-
31 tion. All invoices shall be held by the contractor for a period of five years
32 and shall be subject to audit by the director of taxation. Any contractor
33 or any agent, employee or subcontractor thereof, who shall use or oth-
34 erwise dispose of any materials, machinery or equipment purchased un-
35 der such a certificate for any purpose other than that for which such a
36 certificate is issued without the payment of the sales or compensating tax
37 otherwise imposed thereon, shall be guilty of a misdemeanor and, upon
38 conviction therefor, shall be subject to the penalties provided for in sub-
39 section (g) of K.S.A. 79-3615 and amendments thereto. As used in this
40 subsection, "business" and "retail business" have the meanings respec-
41 tively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

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

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

3 (ff) on and after July 1, 1988, all sales of new mobile homes or man-
4 ufactured homes to the extent of 40% of the gross receipts, determined
5 without regard to any trade-in allowance, received from such sale. As used
6 in this subsection, “mobile homes” and “manufactured homes” shall have
7 the meanings ascribed thereto by K.S.A. 58-4202 and amendments
8 thereto;

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

12 (hh) all sales of medical supplies and equipment, including durable
13 medical equipment, purchased directly by a nonprofit skilled nursing
14 home or nonprofit intermediate nursing care home, as defined by K.S.A.
15 39-923, and amendments thereto, for the purpose of providing medical
16 services to residents thereof. This exemption shall not apply to tangible
17 personal property customarily used for human habitation purposes. As
18 used in this subsection, “durable medical equipment” means equipment
19 including repair and replacement parts for such equipment, but does not
20 include mobility enhancing equipment as defined in subsection (r) which
21 can withstand repeated use, is primarily and customarily used to serve a
22 medical purpose, generally is not useful to a person in the absence of
23 illness or injury and is not worn in or on the body;

24 (ii) all sales of tangible personal property purchased directly by a non-
25 profit organization for nonsectarian comprehensive multidiscipline youth
26 development programs and activities provided or sponsored by such or-
27 ganization, and all sales of tangible personal property by or on behalf of
28 any such organization. This exemption shall not apply to tangible personal
29 property customarily used for human habitation purposes;

30 (jj) all sales of tangible personal property or services, including the
31 renting and leasing of tangible personal property, purchased directly on
32 behalf of a community-based mental retardation facility or mental health
33 center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments
34 thereto, and licensed in accordance with the provisions of K.S.A. 75-
35 3307b and amendments thereto. This exemption shall not apply to tan-
36 gible personal property customarily used for human habitation purposes;

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

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

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

1 (2) For purposes of this subsection:

2 (A) “Integrated production operation” means an integrated series of
3 operations engaged in at a manufacturing or processing plant or facility
4 to process, transform or convert tangible personal property by physical,
5 chemical or other means into a different form, composition or character
6 from that in which it originally existed. Integrated production operations
7 shall include: (i) Production line operations, including packaging operations
8 tions; (ii) preproduction operations to handle, store and treat raw materi-
9 als; (iii) post production handling, storage, warehousing and distribution
10 operations; and (iv) waste, pollution and environmental control opera-
11 tions, if any;

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

15 (C) “manufacturing or processing plant or facility” means a single,
16 fixed location owned or controlled by a manufacturing or processing busi-
17 ness that consists of one or more structures or buildings in a contiguous
18 area where integrated production operations are conducted to manufac-
19 ture or process tangible personal property to be ultimately sold at retail.
20 Such term shall not include any facility primarily operated for the purpose
21 of conveying or assisting in the conveyance of natural gas, electricity, oil
22 or water. A business may operate one or more manufacturing or proces-
23 sing plants or facilities at different locations to manufacture or process
24 a single product of tangible personal property to be ultimately sold at
25 retail;

26 (D) “manufacturing or processing business” means a business that
27 utilizes an integrated production operation to manufacture, process, fab-
28 ricate, finish, or assemble items for wholesale and retail distribution as
29 part of what is commonly regarded by the general public as an industrial
30 manufacturing or processing operation or an agricultural commodity
31 processing operation. (i) Industrial manufacturing or processing opera-
32 tions include, by way of illustration but not of limitation, the fabrication
33 of automobiles, airplanes, machinery or transportation equipment, the
34 fabrication of metal, plastic, wood, or paper products, electricity power
35 generation, water treatment, petroleum refining, chemical production,
36 wholesale bottling, newspaper printing, ready mixed concrete production,
37 and the remanufacturing of used parts for wholesale or retail sale. Such
38 processing operations shall include operations at an oil well, gas well, mine
39 or other excavation site where the oil, gas, minerals, coal, clay, stone, sand
40 or gravel that has been extracted from the earth is cleaned, separated,
41 crushed, ground, milled, screened, washed, or otherwise treated or pre-
42 pared before its transmission to a refinery or before any other wholesale
43 or retail distribution. (ii) Agricultural commodity processing operations

1 include, by way of illustration but not of limitation, meat packing, poultry
2 slaughtering and dressing, processing and packaging farm and dairy prod-
3 ucts in sealed containers for wholesale and retail distribution, feed grind-
4 ing, grain milling, frozen food processing, and grain handling, cleaning,
5 blending, fumigation, drying and aeration operations engaged in by grain
6 elevators or other grain storage facilities. (iii) Manufacturing or processing
7 businesses do not include, by way of illustration but not of limitation,
8 nonindustrial businesses whose operations are primarily retail and that
9 produce or process tangible personal property as an incidental part of
10 conducting the retail business, such as retailers who bake, cook or prepare
11 food products in the regular course of their retail trade, grocery stores,
12 meat lockers and meat markets that butcher or dress livestock or poultry
13 in the regular course of their retail trade, contractors who alter, service,
14 repair or improve real property, and retail businesses that clean, service
15 or refurbish and repair tangible personal property for its owner;

16 (E) “repair and replacement parts and accessories” means all parts
17 and accessories for exempt machinery and equipment, including, but not
18 limited to, dies, jigs, molds, patterns and safety devices that are attached
19 to exempt machinery or that are otherwise used in production, and parts
20 and accessories that require periodic replacement such as belts, drill bits,
21 grinding wheels, grinding balls, cutting bars, saws, refractory brick and
22 other refractory items for exempt kiln equipment used in production
23 operations;

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

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

28 (A) To receive, transport, convey, handle, treat or store raw materials
29 in preparation of its placement on the production line;

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

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

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

38 (E) to test or measure raw materials, the property undergoing man-
39 ufacturing or processing or the finished product, as a necessary part of
40 the manufacturer’s integrated production operations;

41 (F) to plan, manage, control or record the receipt and flow of inven-
42 tories of raw materials, consumables and component parts, the flow of
43 the property undergoing manufacturing or processing and the manage-

1 ment of inventories of the finished product;

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

5 (H) to package the property being manufactured or processed in a
6 container or wrapping in which such property is normally sold or
7 transported;

8 (I) to transmit or transport electricity, coke, gas, water, steam or sim-
9 ilar substances used in production operations from the point of genera-
10 tion, if produced by the manufacturer or processor at the plant site, to
11 that manufacturer's production operation; or, if purchased or delivered
12 from offsite, from the point where the substance enters the site of the
13 plant or facility to that manufacturer's production operations;

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

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

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

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

24 (4) The following machinery, equipment and materials shall be
25 deemed to be exempt even though it may not otherwise qualify as ma-
26 chinery and equipment used as an integral or essential part of an inte-
27 grated production operation: (A) Computers and related peripheral
28 equipment that are utilized by a manufacturing or processing business
29 for engineering of the finished product or for research and development
30 or product design; (B) machinery and equipment that is utilized by a
31 manufacturing or processing business to manufacture or rebuild tangible
32 personal property that is used in manufacturing or processing operations,
33 including tools, dies, molds, forms and other parts of qualifying machinery
34 and equipment; (C) portable plants for aggregate concrete, bulk cement
35 and asphalt including cement mixing drums to be attached to a motor
36 vehicle; (D) industrial fixtures, devices, support facilities and special foun-
37 dations necessary for manufacturing and production operations, and ma-
38 terials and other tangible personal property sold for the purpose of fab-
39 ricating such fixtures, devices, facilities and foundations. An exemption
40 certificate for such purchases shall be signed by the manufacturer or
41 processor. If the fabricator purchases such material, the fabricator shall
42 also sign the exemption certificate; and (E) a manufacturing or processing
43 business' laboratory equipment that is not located at the plant or facility,

1 but that would otherwise qualify for exemption under subsection (3)(E).

2 (5) “Machinery and equipment used as an integral or essential part
3 of an integrated production operation” shall not include:

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

9 (B) machinery, equipment and tools used primarily in maintaining
10 and repairing any type of machinery and equipment or the building and
11 plant;

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

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

20 (E) furniture and other furnishings;

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

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

27 (H) machinery and equipment used for general plant heating, cooling
28 and lighting;

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

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

34 (6) Subsections (3) and (5) shall not be construed as exclusive listings
35 of the machinery and equipment that qualify or do not qualify as an
36 integral or essential part of an integrated production operation. When
37 machinery or equipment is used as an integral or essential part of pro-
38 duction operations part of the time and for nonproduction purpose at
39 other times, the primary use of the machinery or equipment shall deter-
40 mine whether or not such machinery or equipment qualifies for
41 exemption.

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

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

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

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

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

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

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

24 (rr) all sales of tangible personal property which will admit the pur-
25 chaser thereof to any annual event sponsored by a nonprofit organization
26 which is exempt from federal income taxation pursuant to section
27 501(c)(3) of the federal internal revenue code of 1986;

28 (ss) all sales of tangible personal property and services purchased by
29 a public broadcasting station licensed by the federal communications
30 commission as a noncommercial educational television or radio station;

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

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

39 (vv) all sales of tangible personal property purchased by any of the
40 following organizations which are exempt from federal income taxation
41 pursuant to section 501 (c)(3) of the federal internal revenue code of
42 1986, for the following purposes, and all sales of any such property by or
43 on behalf of any such organization for any such purpose:

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

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

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

11 (4) the American Diabetes Association Kansas Affiliate, Inc. for the
12 purpose of eliminating diabetes through medical research, public edu-
13 cation focusing on disease prevention and education, patient education
14 including information on coping with diabetes, and professional education
15 and training;

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

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

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

28 (8) the National Kidney Foundation of Kansas and Western Missouri
29 for the purpose of eliminating kidney disease through medical research
30 and public and private education related to such disease;

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

34 (xx) all sales of tangible personal property and services purchased by
35 a nonprofit zoo which is exempt from federal income taxation pursuant
36 to section 501(c)(3) of the federal internal revenue code of 1986, or on
37 behalf of such zoo by an entity itself exempt from federal income taxation
38 pursuant to section 501(c)(3) of the federal internal revenue code of 1986
39 contracted with to operate such zoo and all sales of tangible personal
40 property or services purchased by a contractor for the purpose of con-
41 structing, equipping, reconstructing, maintaining, repairing, enlarging,
42 furnishing or remodeling facilities for any nonprofit zoo which would be
43 exempt from taxation under the provisions of this section if purchased

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

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

39 (zz) all sales of machinery and equipment purchased by over-the-air,
40 free access radio or television station which is used directly and primarily
41 for the purpose of producing a broadcast signal or is such that the failure
42 of the machinery or equipment to operate would cause broadcasting to
43 cease. For purposes of this subsection, machinery and equipment shall

1 include, but not be limited to, that required by rules and regulations of
2 the federal communications commission, and all sales of electricity which
3 are essential or necessary for the purpose of producing a broadcast signal
4 or is such that the failure of the electricity would cause broadcasting to
5 cease;

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

1 any purpose other than that for which such a certificate is issued without
2 the payment of the sales or compensating tax otherwise imposed upon
3 such materials, shall be guilty of a misdemeanor and, upon conviction
4 therefor, shall be subject to the penalties provided for in subsection (g)
5 of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after
6 July 1, 1998, but prior to the effective date of this act upon the gross
7 receipts received from any sale exempted by the amendatory provisions
8 of this subsection shall be refunded. Each claim for a sales tax refund
9 shall be verified and submitted to the director of taxation upon forms
10 furnished by the director and shall be accompanied by any additional
11 documentation required by the director. The director shall review each
12 claim and shall refund that amount of sales tax paid as determined under
13 the provisions of this subsection. All refunds shall be paid from the sales
14 tax refund fund upon warrants of the director of accounts and reports
15 pursuant to vouchers approved by the director or the director's designee;

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

22 (ccc) on and after July 1, 1999, all sales of tangible personal property
23 and services purchased by a primary care clinic or health center the pri-
24 mary purpose of which is to provide services to medically underserved
25 individuals and families, and which is exempt from federal income taxa-
26 tion pursuant to section 501 (c)(3) of the federal internal revenue code,
27 and all sales of tangible personal property or services purchased by a
28 contractor for the purpose of constructing, equipping, reconstructing,
29 maintaining, repairing, enlarging, furnishing or remodeling facilities for
30 any such clinic or center which would be exempt from taxation under the
31 provisions of this section if purchased directly by such clinic or center.
32 Nothing in this subsection shall be deemed to exempt the purchase of
33 any construction machinery, equipment or tools used in the constructing,
34 equipping, reconstructing, maintaining, repairing, enlarging, furnishing
35 or remodeling facilities for any such clinic or center. When any such clinic
36 or center shall contract for the purpose of constructing, equipping, re-
37 constructing, maintaining, repairing, enlarging, furnishing or remodeling
38 facilities, it shall obtain from the state and furnish to the contractor an
39 exemption certificate for the project involved, and the contractor may
40 purchase materials for incorporation in such project. The contractor shall
41 furnish the number of such certificate to all suppliers from whom such
42 purchases are made, and such suppliers shall execute invoices covering
43 the same bearing the number of such certificate. Upon completion of the

1 project the contractor shall furnish to such clinic or center concerned a
2 sworn statement, on a form to be provided by the director of taxation,
3 that all purchases so made were entitled to exemption under this subsec-
4 tion. All invoices shall be held by the contractor for a period of five years
5 and shall be subject to audit by the director of taxation. If any materials
6 purchased under such a certificate are found not to have been incorpo-
7 rated in the building or other project or not to have been returned for
8 credit or the sales or compensating tax otherwise imposed upon such
9 materials which will not be so incorporated in the building or other pro-
10 ject reported and paid by such contractor to the director of taxation not
11 later than the 20th day of the month following the close of the month in
12 which it shall be determined that such materials will not be used for the
13 purpose for which such certificate was issued, such clinic or center con-
14 cerned shall be liable for tax on all materials purchased for the project,
15 and upon payment thereof it may recover the same from the contractor
16 together with reasonable attorney fees. Any contractor or any agent, em-
17 ployee or subcontractor thereof, who shall use or otherwise dispose of
18 any materials purchased under such a certificate for any purpose other
19 than that for which such a certificate is issued without the payment of
20 the sales or compensating tax otherwise imposed upon such materials,
21 shall be guilty of a misdemeanor and, upon conviction therefor, shall be
22 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615,
23 and amendments thereto;

24 (ddd) on and after January 1, 1999, and before January 1, 2000, all
25 sales of materials and services purchased by any class II or III railroad as
26 classified by the federal surface transportation board for the construction,
27 renovation, repair or replacement of class II or III railroad track and
28 facilities used directly in interstate commerce. In the event any such track
29 or facility for which materials and services were purchased sales tax ex-
30 empt is not operational for five years succeeding the allowance of such
31 exemption, the total amount of sales tax which would have been payable
32 except for the operation of this subsection shall be recouped in accord-
33 ance with rules and regulations adopted for such purpose by the secretary
34 of revenue;

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

39 (fff) all sales of material handling equipment, racking systems and
40 other related machinery and equipment that is used for the handling,
41 movement or storage of tangible personal property in a warehouse or
42 distribution facility in this state; all sales of installation, repair and main-
43 tenance services performed on such machinery and equipment; and all

1 sales of repair and replacement parts for such machinery and equipment.
2 For purposes of this subsection, a warehouse or distribution facility means
3 a single, fixed location that consists of buildings or structures in a contig-
4 uous area where storage or distribution operations are conducted that are
5 separate and apart from the business' retail operations, if any, and which
6 do not otherwise qualify for exemption as occurring at a manufacturing
7 or processing plant or facility. Material handling and storage equipment
8 shall include aeration, dust control, cleaning, handling and other such
9 equipment that is used in a public grain warehouse or other commercial
10 grain storage facility, whether used for grain handling, grain storage, grain
11 refining or processing, or other grain treatment operation; and

12 (ggg) all sales of tangible personal property and services purchased
13 by or on behalf of the Kansas Academy of Science which is exempt from
14 federal income taxation pursuant to section 501(c)(3) of the federal in-
15 ternal revenue code of 1986, and used solely by such academy for the
16 preparation, publication and dissemination of education materials.

17 Sec. 2. K.S.A. 2003 Supp. 79-3606 is hereby repealed.

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

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