

SENATE BILL No. 372

By Committee on Assessment and Taxation

1-27

AN ACT concerning sales taxation; relating to isolated or occasional sales of motor vehicles; computation of tax; amending K.S.A. 2003 Supp. 79-3603 and repealing the existing section; also repealing K.S.A. 2003 Supp. 79-3603c.

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

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

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

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

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

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

43 (d) the gross receipts from the sale of meals or drinks furnished at

1 any private club, drinking establishment, catered event, restaurant, eating
2 house, dining car, hotel, drugstore or other place where meals or drinks
3 are regularly sold to the public;

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

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

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

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

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

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

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

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

42 (2) Any such contractor, subcontractor or repairman who maintains
43 an inventory of such property both for sale at retail and for use by them

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

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

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

20 (n) the gross receipts received from dues charged by public and pri-
21 vate clubs, drinking establishments, organizations and businesses, pay-
22 ment of which entitles a member to the use of facilities for recreation or
23 entertainment, but such tax shall not be levied and collected upon the
24 gross receipts received from: (1) Dues charged by any organization ex-
25 empt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of
26 K.S.A. 79-201, and amendments thereto; and (2) sales of memberships
27 in a nonprofit organization which is exempt from federal income taxation
28 pursuant to section 501 (c)(3) of the federal internal revenue code of
29 1986, and whose purpose is to support the operation of a nonprofit zoo;

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

1 *vehicle or trailer or the value pursuant to subsections (a), (b)(1) and (b)(2)*
2 *of K.S.A. 79-5105, and amendments thereto, whichever amount is higher.*
3 *The actual selling price shall be the base for computing the tax on the*
4 *isolated or occasional sale of wrecked or damaged vehicles.* In determining
5 the base for computing the tax on such isolated or occasional sale, the
6 fair market value of any motor vehicle or trailer traded in by the purchaser
7 to the seller may be deducted from the selling price;

8 (p) the gross receipts received for the service of installing or applying
9 tangible personal property which when installed or applied is not being
10 held for sale in the regular course of business, and whether or not such
11 tangible personal property when installed or applied remains tangible
12 personal property or becomes a part of real estate, except that no tax shall
13 be imposed upon the service of installing or applying tangible personal
14 property in connection with the original construction of a building or
15 facility, the original construction, reconstruction, restoration, remodeling,
16 renovation, repair or replacement of a residence or the construction, re-
17 construction, restoration, replacement or repair of a bridge or highway.

18 For the purposes of this subsection:

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

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

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

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

40 (q) the gross receipts received for the service of repairing, servicing,
41 altering or maintaining tangible personal property which when such serv-
42 ices are rendered is not being held for sale in the regular course of busi-
43 ness, and whether or not any tangible personal property is transferred in

1 connection therewith. The tax imposed by this subsection shall be appli-
2 cable to the services of repairing, servicing, altering or maintaining an
3 item of tangible personal property which has been and is fastened to,
4 connected with or built into real property;

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

8 (s) the gross receipts received from the sale of computer software,
9 the sale of the service of providing computer software other than pre-
10 written computer software and the sale of the services of modifying, al-
11 tering, updating or maintaining computer software, whether the com-
12 puter software is installed or delivered electronically by tangible storage
13 media physically transferred to the purchaser or by load and leave;

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

22 (u) the gross receipts received from the sale of prepaid calling service
23 as defined in K.S.A. 2003 Supp. 79-3673, and amendments thereto; 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. 2. K.S.A. 2003 Supp. 79-3603 and 79-3603c are hereby
33 repealed.

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

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