

SENATE BILL No. 444

By Committee on Assessment and Taxation

2-4

AN ACT concerning sales taxation; relating to destination sourcing rules; amending K.S.A. 2003 Supp. 12-191, 79-3603, 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673 and 79-3682 and repealing the existing sections; 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. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers' sales tax, shall also be subject to such county or city retail sales tax. Except as hereinafter provided, all retail sales, for the purpose of this act, shall be considered to have been consummated: (1) *Except as provided in section 11, and amendments thereto, commencing on the effective date of this act and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes, at the place of business of the retailer. During such time period, retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service or services taxed under subsection (k) of K.S.A. 79-3603, and amendments thereto, shall be considered to have been consummated at the situs of the subscriber billed therefor; retail sales involving the leasing of telecommunication or data processing equipment commonly used in connection with telephone services shall be considered to have been consummated at the situs of the lessee; and retail sales involving the furnishing of services taxable under subsection (p), (q) and (r) of K.S.A. 79-3603, and amendments thereto, pursuant to a contract under which the sale of such services and the furnishing of tangible personal property exceeds \$10,000 per contract per contractor shall be considered to have been consummated at the situs where such services are performed; (2) on and after the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sell-*

1 *ers lacking physical presence in this state to collect and remit state and*
2 *local sales or use taxes*, at the location determined by the sourcing rules
3 as provided in K.S.A. 2003 Supp. 79-3670, 79-3671, 79-3672 and 79-3673,
4 and amendments thereto. The retail sales or transfer of watercraft, mod-
5 ular homes, manufactured homes or mobile homes, shall be considered
6 consummated at the place of business of the retailer and sourced to such
7 location. The retail sale, excluding the lease or rental, of motor vehicles,
8 trailers, semi-trailers or aircraft that do not qualify as transportation
9 equipment, as defined in subsection (d) of K.S.A. 2003 Supp. 79-3670,
10 and amendments thereto, shall be considered consummated at the place
11 of business of the retailer and sourced to such location.

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

37 A city retailers' sales tax shall not become effective within any area
38 annexed by a city levying such tax until the first day of the calendar quarter
39 next following the 90th day after the date that the governing body of such
40 city provided the state department of revenue with a certified copy of the
41 annexation ordinance and a map of the city detailing the annexed area.
42 The director of taxation shall provide notice to sellers of such tax within
43 30 days after receiving such notice from the city or county.

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

8 Sec. 2. K.S.A. 2003 Supp. 79-3603 is hereby amended to read as
9 follows: 79-3603. For the privilege of engaging in the business of selling
10 tangible personal property at retail in this state or rendering or furnishing
11 any of the services taxable under this act, there is hereby levied and there
12 shall be collected and paid a tax at the rate of 5.3% on and after July 1,
13 2002, and before July 1, ~~2004~~, ~~5.2% on and after July 1, 2004, and before~~
14 ~~July 1, 2005~~ 2006, and 5% on and after July 1, ~~2005~~ 2006, and, within a
15 redevelopment district established pursuant to K.S.A. 74-8921, and
16 amendments thereto, there is hereby levied and there shall be collected
17 and paid an additional tax at the rate of 2% until the earlier of the date
18 the bonds issued to finance or refinance the redevelopment project have
19 been paid in full or the final scheduled maturity of the first series of bonds
20 issued to finance any part of the project upon:

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

23 (b) (1) the gross receipts from intrastate telephone or telegraph serv-
24 ices; (2) the gross receipts received from the sale of interstate telephone
25 or telegraph services, which (A) originate within this state and terminate
26 outside the state and are billed to a customer's telephone number or
27 account in this state; or (B) originate outside this state and terminate
28 within this state and are billed to a customer's telephone number or ac-
29 count in this state except that the sale of interstate telephone or telegraph
30 service does not include: (A) Any interstate incoming or outgoing wide
31 area telephone service or wide area transmission type service which en-
32 titles the subscriber to make or receive an unlimited number of com-
33 munications to or from persons having telephone service in a specified
34 area which is outside the state in which the station provided this service
35 is located; (B) any interstate private communications service to the per-
36 sons contracting for the receipt of that service that entitles the purchaser
37 to exclusive or priority use of a communications channel or group of
38 channels between exchanges; (C) any value-added nonvoice service in
39 which computer processing applications are used to act on the form, con-
40 tent, code or protocol of the information to be transmitted; (D) any tel-
41 ecommunication service to a provider of telecommunication services
42 which will be used to render telecommunications services, including car-
43 rier access services; or (E) any service or transaction defined in this sec-

1 tion among entities classified as members of an affiliated group as pro-
2 vided by section 1504 of the federal internal revenue code of 1986, as in
3 effect on January 1, 2001; and (3) the gross receipts from the provision
4 of services taxable under this subsection which are billed on a combined
5 basis with nontaxable services, shall be accounted for and the tax remitted
6 as follows: The taxable portion of the selling price of those combined
7 services shall include only those charges for taxable services if the selling
8 price for the taxable services can be readily distinguishable in the retailer's
9 books and records from the selling price for the nontaxable services. Oth-
10 erwise, the gross receipts from the sale of both taxable and nontaxable
11 services billed on a combined basis shall be deemed attributable to the
12 taxable services included therein. Within 90 days of billing taxable services
13 on a combined basis with nontaxable services, the retailer shall enter into
14 a written agreement with the secretary identifying the methodology to be
15 used in determining the taxable portion of the selling price of those com-
16 bined services. The burden of proving that any receipt or charge is not
17 taxable shall be upon the retailer. Upon request from the customer, the
18 retailer shall disclose to the customer the selling price for the taxable
19 services included in the selling price for the taxable and nontaxable serv-
20 ices billed on a combined basis;

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

36 (d) the gross receipts from the sale of meals or drinks furnished at
37 any private club, drinking establishment, catered event, restaurant, eating
38 house, dining car, hotel, drugstore or other place where meals or drinks
39 are regularly sold to the public;

40 (e) the gross receipts from the sale of admissions to any place pro-
41 viding amusement, entertainment or recreation services including admis-
42 sions to state, county, district and local fairs, but such tax shall not be
43 levied and collected upon the gross receipts received from sales of ad-

- 1 missions to any cultural and historical event which occurs triennially;
- 2 (f) the gross receipts from the operation of any coin-operated device
3 dispensing or providing tangible personal property, amusement or other
4 services except laundry services, whether automatic or manually operated;
- 5 (g) the gross receipts from the service of renting of rooms by hotels,
6 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-
7 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto
8 but such tax shall not be levied and collected upon the gross receipts
9 received from sales of such service to the federal government and any
10 agency, officer or employee thereof in association with the performance
11 of official government duties;
- 12 (h) the gross receipts from the service of renting or leasing of tangible
13 personal property except such tax shall not apply to the renting or leasing
14 of machinery, equipment or other personal property owned by a city and
15 purchased from the proceeds of industrial revenue bonds issued prior to
16 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
17 12-1749, and amendments thereto, and any city or lessee renting or leas-
18 ing such machinery, equipment or other personal property purchased
19 with the proceeds of such bonds who shall have paid a tax under the
20 provisions of this section upon sales made prior to July 1, 1973, shall be
21 entitled to a refund from the sales tax refund fund of all taxes paid
22 thereon;
- 23 (i) the gross receipts from the rendering of dry cleaning, pressing,
24 dyeing and laundry services except laundry services rendered through a
25 coin-operated device whether automatic or manually operated;
- 26 (j) the gross receipts from the rendering of the services of washing
27 and washing and waxing of vehicles;
- 28 (k) the gross receipts from cable, community antennae and other sub-
29 scriber radio and television services;
- 30 (l) (1) except as otherwise provided by paragraph (2), the gross re-
31 ceipts received from the sales of tangible personal property to all con-
32 tractors, subcontractors or repairmen for use by them in erecting struc-
33 tures, or building on, or otherwise improving, altering, or repairing real
34 or personal property.
- 35 (2) Any such contractor, subcontractor or repairman who maintains
36 an inventory of such property both for sale at retail and for use by them
37 for the purposes described by paragraph (1) shall be deemed a retailer
38 with respect to purchases for and sales from such inventory, except that
39 the gross receipts received from any such sale, other than a sale at retail,
40 shall be equal to the total purchase price paid for such property and the
41 tax imposed thereon shall be paid by the deemed retailer;
- 42 (m) the gross receipts received from fees and charges by public and
43 private clubs, drinking establishments, organizations and businesses for

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

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

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

39 (p) the gross receipts received for the service of installing or applying
40 tangible personal property which when installed or applied is not being
41 held for sale in the regular course of business, and whether or not such
42 tangible personal property when installed or applied remains tangible
43 personal property or becomes a part of real estate, except that no tax shall

1 be imposed upon the service of installing or applying tangible personal
2 property in connection with the original construction of a building or
3 facility, the original construction, reconstruction, restoration, remodeling,
4 renovation, repair or replacement of a residence or the construction, re-
5 construction, restoration, replacement or repair of a bridge or highway.

6 For the purposes of this subsection:

7 (1) "Original construction" shall mean the first or initial construction
8 of a new building or facility. The term "original construction" shall include
9 the addition of an entire room or floor to any existing building or facility,
10 the completion of any unfinished portion of any existing building or fa-
11 cility and the restoration, reconstruction or replacement of a building or
12 facility damaged or destroyed by fire, flood, tornado, lightning, explosion
13 or earthquake, but such term, except with regard to a residence, shall not
14 include replacement, remodeling, restoration, renovation or reconstruc-
15 tion under any other circumstances;

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

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

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

28 (q) the gross receipts received for the service of repairing, servicing,
29 altering or maintaining tangible personal property which when such serv-
30 ices are rendered is not being held for sale in the regular course of busi-
31 ness, and whether or not any tangible personal property is transferred in
32 connection therewith. The tax imposed by this subsection shall be appli-
33 cable to the services of repairing, servicing, altering or maintaining an
34 item of tangible personal property which has been and is fastened to,
35 connected with or built into real property;

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

39 (s) the gross receipts received from the sale of computer software,
40 the sale of the service of providing computer software other than pre-
41 written computer software and the sale of the services of modifying, al-
42 tering, updating or maintaining computer software, whether the com-
43 puter software is installed or delivered electronically by tangible storage

1 media physically transferred to the purchaser or by load and leave;
2 (t) the gross receipts received for telephone answering services, mo-
3 bile telecommunication services, beeper services and other similar serv-
4 ices. On and after August 1, 2002, the provisions of the federal mobile
5 telecommunications sourcing act as in effect on January 1, 2002, shall be
6 applicable to all sales of mobile telecommunication services taxable pur-
7 suant to this subsection. The secretary of revenue is hereby authorized
8 and directed to perform any act deemed necessary to properly implement
9 such provisions;

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

18 (v) the gross receipts received from the sales of bingo cards, bingo
19 faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*,
20 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,
21 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before
22 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo
23 faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*,
24 and amendments thereto, shall be exempt from taxes imposed pursuant
25 to this section.

26 Sec. 3. K.S.A. 2003 Supp. 79-3667 is hereby amended to read as
27 follows: 79-3667. On and after the databases are developed pursuant to
28 subsections (a), (b) and (c) of K.S.A. 2003 Supp. 79-3668 and amend-
29 ments thereto and after the state has joined and become a member of
30 the agreement, sellers and certified service providers (CSPs) are relieved
31 from liability for state and local sales and use tax for having charged and
32 collected the incorrect amount of sales tax resulting from the seller or
33 certified service provider relying on erroneous data provided by the sec-
34 retary on tax rates, boundaries or taxing jurisdiction assignments. If the
35 secretary provides an address-based system for assigning taxing jurisdic-
36 tions that meets the requirements developed pursuant to the federal mo-
37 bile telecommunications sourcing act, no liability relief is provided to
38 sellers or certified service providers for errors resulting from reliance on
39 the information provided under the provisions of subsection (c) of K.S.A.
40 2003 Supp. 79-3668 and amendments thereto. *Except as provided in sec-*
41 *tion 11, and amendments thereto, the provisions of this section shall not*
42 *be effective for the period commencing on the effective date of this act,*
43 *and ending on the date that legislation enacted by the United States Con-*

1 *gress becomes effective that authorizes the secretary of revenue to require*
2 *some out-of-state, remote sellers lacking physical presence in this state to*
3 *collect and remit state and local sales or use taxes.*

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

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

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

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

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

37 (f) *Except as provided in section 11, and amendments thereto, the*
38 *provisions of this section shall not be effective for the period commencing*
39 *on the effective date of this act, and ending on the date that legislation*
40 *enacted by the United States Congress becomes effective that authorizes*
41 *the secretary of revenue to require some out-of-state, remote sellers lack-*
42 *ing physical presence in this state to collect and remit state and local sales*
43 *or use taxes.*

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

12 (b) K.S.A. 2003 Supp. 79-3670 and amendments thereto does not
13 apply to sales or use taxes levied on the following: (1) The retail sale or
14 transfer of water craft, modular homes, manufactured homes or mobile
15 homes. The retail sale of these items shall be sourced according to K.S.A.
16 12-191 and amendments thereto;

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

24 (3) telecommunications services, as set out in K.S.A. 2003 Supp. 79-
25 3673 and amendments thereto, shall be sourced in accordance with
26 K.S.A. 2003 Supp. 79-3673 and amendments thereto.

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

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

39 (2) when the product is not received by the purchaser at a business
40 location of the seller, the sale is sourced to the location where receipt by
41 the purchaser, or the purchaser's donee, designated as such by the pur-
42 chaser, occurs, including the location indicated by instructions for delivery
43 to the purchaser or donee, known to the seller;

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

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

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

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

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

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

38 (c) The lease or rental of motor vehicles, trailers, semi-trailers or air-
39 craft that do not qualify as transportation equipment, as defined in sub-
40 section (d), shall be sourced as follows: (1) For a lease or rental that
41 requires recurring periodic payments, each periodic payment is sourced
42 to the primary property location. The primary property location shall be
43 as indicated by an address for the property provided by the lessee that is

1 available to the lessor from its records maintained in the ordinary course
2 of business, when use of this address does not constitute bad faith. This
3 location shall not be altered by intermittent use at different locations;

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

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

10 (d) The retail sale, including lease or rental, of transportation equip-
11 ment shall be sourced the same as a retail sale in accordance with the
12 provisions of subsection (a), notwithstanding the exclusion of lease or
13 rental in subsection (a). “Transportation equipment” means any of the
14 following: (1) Locomotives and railcars that are utilized for the carriage
15 of persons or property in interstate commerce;

16 (2) trucks and truck-tractors with a gross vehicle weight rating
17 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger
18 buses that are: (A) Registered through the international registration plan;
19 and

20 (B) operated under authority of a carrier authorized and certificated
21 by the United States department of transportation or another federal or
22 a foreign authority to engage in the carriage of persons or property in
23 interstate or foreign commerce;

24 (3) aircraft that are operated by air carriers authorized and certifi-
25 cated by the United States department of transportation or another fed-
26 eral or a foreign authority to engage in the carriage of persons or property
27 in interstate or foreign commerce; and

28 (4) containers designed for use on and component parts attached or
29 secured on the items set forth in subsection (d)(1), (d)(2) and (d)(3).

30 (e) As used in this section, the terms “receive” and “receipt” mean:

31 (1) Taking possession of tangible personal property;

32 (2) making first use of services; or

33 (3) taking possession or making first use of digital goods, whichever
34 comes first. The terms receive and receipt do not include possession by
35 a shipping company on behalf of the purchaser.

36 (f) *Except as provided in section 11, and amendments thereto, the*
37 *provisions of this section shall not be effective for the period commencing*
38 *on the effective date of this act, and ending on the date that legislation*
39 *enacted by the United States Congress becomes effective that authorizes*
40 *the secretary of revenue to require some out-of-state, remote sellers lack-*
41 *ing physical presence in this state to collect and remit state and local sales*
42 *or use taxes.*

43 Sec. 7. K.S.A. 2003 Supp. 79-3671 is hereby amended to read as

1 follows: 79-3671. (a) Notwithstanding the provisions of K.S.A. 2003 Supp.
2 79-3670 and amendments thereto, a business purchaser that is not a
3 holder of a direct pay permit that knows at the time of its purchase of a
4 digital good, computer software delivered electronically or a service that
5 the digital good, computer software delivered electronically or service will
6 be concurrently available for use in more than one jurisdiction shall de-
7 liver to the seller in conjunction with its purchase a multiple points of use
8 or MPU exemption form disclosing this fact.

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

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

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

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

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

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

39 (2) Upon receipt of the direct mail form, the seller is relieved of all
40 obligations to collect, pay or remit the applicable tax and the purchaser
41 is obligated to pay or remit the applicable tax on a direct pay basis. A
42 direct mail form shall remain in effect for all future sales of direct mail
43 by the seller to the purchaser until it is revoked in writing.

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

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

13 (c) If a purchaser of direct mail provides the seller with documenta-
14 tion of direct pay authority, the purchaser shall not be required to pro-
15 vide a direct mail form or delivery information to the seller.

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

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

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

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

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

43 (3) a sale of prepaid calling service is sourced in accordance with

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

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

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

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

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

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

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

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

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

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

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

42 (6) “end user” means the person who utilizes the telecommunication
43 service. In the case of an entity, end user means the individual who utilizes

- 1 the services on behalf of the entity;
- 2 (7) “home service provider” means the same as that term in defined
3 in section 124(5) of Public Law 106-252 (mobile telecommunications
4 sourcing act);
- 5 (8) “mobile telecommunications service” means the same as that
6 term is defined in section 124(5) of Public Law 106-252 (mobile telecom-
7 munications sourcing act);
- 8 (9) “place of primary use” means the street address representative of
9 where the customer’s use of the telecommunications service primarily
10 occurs, which must be the residential street address or the primary busi-
11 ness street address of the customer. In the case of mobile telecommu-
12 nications services, place of primary use must be within the licensed serv-
13 ice area of the home service provider;
- 14 (10) “post-paid calling service” means the telecommunications serv-
15 ice obtained by making a payment on a call-by-call basis either through
16 the use of a credit card or payment mechanism such as a bank card, travel
17 card, credit card or debit card, or by charge made to which a telephone
18 number which is not associated with the origination or termination of the
19 telecommunications service. A post-paid calling service includes a tele-
20 communications service that would be a prepaid calling service except it
21 is not exclusively a telecommunication service;
- 22 (11) “prepaid calling service” means the right to access exclusively
23 telecommunications services, which must be paid for in advance and
24 which enables the origination of calls using an access number or author-
25 ization code, whether manually or electronically dialed, and that is sold
26 in predetermined units or dollars of which the number declines with use
27 in a known amount;
- 28 (12) “private communication service” means a telecommunication
29 service that entitles the customer to exclusive or priority use of a com-
30 munications channel or group of channels between or among termination
31 points, regardless of the manner in which such channel or channels are
32 connected, and includes switching capacity, extension lines, stations and
33 any other associated services that are provided in connection with the use
34 of such channel or channels; and
- 35 (13) “service address” means: (A) The location of the telecommuni-
36 cations equipment to which a customer’s call is charged and from which
37 the call originates or terminates, regardless of where the call is billed or
38 paid;
- 39 (B) if the location in subsection (13)(A) is not known, service address
40 means the origination point of the signal of the telecommunications serv-
41 ices first identified by either the seller’s telecommunications system or in
42 information received by the seller from its service provider, where the
43 system used to transport such signals is not that of the seller; and

1 (C) if the location in subsections (13)(A) and (13)(B) are not known,
2 the service address means the location of the customer's place of primary
3 use.

4 (f) *Except as provided in section 11, and amendments thereto, the*
5 *provisions of this section shall not be effective for the period commencing*
6 *on the effective date of this act, and ending on the date that legislation*
7 *enacted by the United States Congress becomes effective that authorizes*
8 *the secretary of revenue to require some out-of-state, remote sellers lack-*
9 *ing physical presence in this state to collect and remit state and local sales*
10 *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 Sec. 12. K.S.A. 2003 Supp. 12-191, 79-3603, 79-3603c, 79-3667, 79-
27 3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673 and 79-3682 are
28 hereby repealed.

29 Sec. 13. This act shall take effect and be in force from and after its
30 publication in the Kansas register.

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