

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 544

By Committee on Ways and Means

2-24

10 AN ACT concerning sales taxation; relating to exemptions; aircraft and
11 aircraft repair; amending K.S.A. 2003 Supp. 79-3606 and repealing the
12 existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2003 Supp. 79-3606 is hereby amended to read as
16 follows: 79-3606. The following shall be exempt from the tax imposed by
17 this act:

18 (a) All sales of motor-vehicle fuel or other articles upon which a sales
19 or excise tax has been paid, not subject to refund, under the laws of this
20 state except cigarettes as defined by K.S.A. 79-3301 and amendments
21 thereto, cereal malt beverages and malt products as defined by K.S.A. 79-
22 3817 and amendments thereto, including wort, liquid malt, malt syrup
23 and malt extract, which is not subject to taxation under the provisions of
24 K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant
25 to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to
26 K.S.A. 65-3424d, and amendments thereto, and drycleaning and laundry
27 services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

28 (b) all sales of tangible personal property or service, including the
29 renting and leasing of tangible personal property, purchased directly by
30 the state of Kansas, a political subdivision thereof, other than a school or
31 educational institution, or purchased by a public or private nonprofit hos-
32 pital or public hospital authority or nonprofit blood, tissue or organ bank
33 and used exclusively for state, political subdivision, hospital or public hos-
34 pital authority or nonprofit blood, tissue or organ bank purposes, except
35 when: (1) Such state, hospital or public hospital authority is engaged or
36 proposes to engage in any business specifically taxable under the provi-
37 sions of this act and such items of tangible personal property or service
38 are used or proposed to be used in such business, or (2) such political
39 subdivision is engaged or proposes to engage in the business of furnishing
40 gas, electricity or heat to others and such items of personal property or
41 service are used or proposed to be used in such business;

42 (c) all sales of tangible personal property or services, including the
43 renting and leasing of tangible personal property, purchased directly by

1 a public or private elementary or secondary school or public or private
2 nonprofit educational institution and used primarily by such school or
3 institution for nonsectarian programs and activities provided or sponsored
4 by such school or institution or in the erection, repair or enlargement of
5 buildings to be used for such purposes. The exemption herein provided
6 shall not apply to erection, construction, repair, enlargement or equip-
7 ment of buildings used primarily for human habitation;

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

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

32 (e) all sales of tangible personal property or services purchased by a
33 contractor for the erection, repair or enlargement of buildings or other
34 projects for the government of the United States, its agencies or instru-
35 mentalities, which would be exempt from taxation if purchased directly
36 by the government of the United States, its agencies or instrumentalities.
37 When the government of the United States, its agencies or instrumen-
38 talities shall contract for the erection, repair, or enlargement of any build-
39 ing or other project, it shall obtain from the state and furnish to the
40 contractor an exemption certificate for the project involved, and the con-
41 tractor may purchase materials for incorporation in such project. The
42 contractor shall furnish the number of such certificates to all suppliers
43 from whom such purchases are made, and such suppliers shall execute

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

20 (f) tangible personal property purchased by a railroad or public utility
21 for consumption or movement directly and immediately in interstate
22 commerce;

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

43 (h) all rentals of nonsectarian textbooks by public or private elemen-

- 1 tary or secondary schools;
- 2 (i) the lease or rental of all films, records, tapes, or any type of sound
3 or picture transcriptions used by motion picture exhibitors;
- 4 (j) meals served without charge or food used in the preparation of
5 such meals to employees of any restaurant, eating house, dining car, hotel,
6 drugstore or other place where meals or drinks are regularly sold to the
7 public if such employees' duties are related to the furnishing or sale of
8 such meals or drinks;
- 9 (k) any motor vehicle, semitrailer or pole trailer, as such terms are
10 defined by K.S.A. 8-126 and amendments thereto, ~~or aircraft~~ **or aircraft**
11 sold and delivered in this state to a bona fide resident of another state,
12 which motor vehicle, semitrailer; ~~or~~, pole trailer ~~or aircraft~~ **or aircraft** is
13 not to be registered or based in this state and which vehicle, semitrailer;
14 ~~or~~, pole trailer ~~or aircraft~~ **or aircraft** will not remain in this state more
15 than 10 days;
- 16 (l) all isolated or occasional sales of tangible personal property, serv-
17 ices, substances or things, except isolated or occasional sale of motor
18 vehicles specifically taxed under the provisions of subsection (o) of K.S.A.
19 79-3603 and amendments thereto;
- 20 (m) all sales of tangible personal property which become an ingre-
21 dient or component part of tangible personal property or services pro-
22 duced, manufactured or compounded for ultimate sale at retail within or
23 without the state of Kansas; and any such producer, manufacturer or
24 compounder may obtain from the director of taxation and furnish to the
25 supplier an exemption certificate number for tangible personal property
26 for use as an ingredient or component part of the property or services
27 produced, manufactured or compounded;
- 28 (n) all sales of tangible personal property which is consumed in the
29 production, manufacture, processing, mining, drilling, refining or com-
30 pounding of tangible personal property, the treating of by-products or
31 wastes derived from any such production process, the providing of serv-
32 ices or the irrigation of crops for ultimate sale at retail within or without
33 the state of Kansas; and any purchaser of such property may obtain from
34 the director of taxation and furnish to the supplier an exemption certifi-
35 cate number for tangible personal property for consumption in such pro-
36 duction, manufacture, processing, mining, drilling, refining, compound-
37 ing, treating, irrigation and in providing such services;
- 38 (o) all sales of animals, fowl and aquatic plants and animals, the pri-
39 mary purpose of which is use in agriculture or aquaculture, as defined in
40 K.S.A. 47-1901, and amendments thereto, the production of food for
41 human consumption, the production of animal, dairy, poultry or aquatic
42 plant and animal products, fiber or fur, or the production of offspring for
43 use for any such purpose or purposes;

1 (p) all sales of drugs dispensed pursuant to a prescription order by a
2 licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-
3 1626, and amendments thereto. As used in this subsection, “drug” means
4 a compound, substance or preparation and any component of a com-
5 pound, substance or preparation, other than food and food ingredients,
6 dietary supplements or alcoholic beverages, recognized in the official
7 United States pharmacopoeia, official homeopathic pharmacopoeia of the
8 United States or official national formulary, and supplement to any of
9 them, intended for use in the diagnosis, cure, mitigation, treatment or
10 prevention of disease or intended to affect the structure or any function
11 of the body;

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

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

30 (s) except as provided in K.S.A. 2003 Supp. 82a-2101, and amend-
31 ments thereto, all sales of tangible personal property or services pur-
32 chased directly or indirectly by a groundwater management district or-
33 ganized or operating under the authority of K.S.A. 82a-1020 *et seq.* and
34 amendments thereto, by a rural water district organized or operating un-
35 der the authority of K.S.A. 82a-612, and amendments thereto, or by a
36 water supply district organized or operating under the authority of K.S.A.
37 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto,
38 which property or services are used in the construction activities, opera-
39 tion or maintenance of the district;

40 (t) all sales of farm machinery and equipment or aquaculture ma-
41 chinery and equipment, repair and replacement parts therefor and serv-
42 ices performed in the repair and maintenance of such machinery and
43 equipment. For the purposes of this subsection the term “farm machinery

1 and equipment or aquaculture machinery and equipment” shall include
2 machinery and equipment used in the operation of Christmas tree farm-
3 ing but shall not include any passenger vehicle, truck, truck tractor, trailer,
4 semitrailer or pole trailer, other than a farm trailer, as such terms are
5 defined by K.S.A. 8-126 and amendments thereto. Each purchaser of
6 farm machinery and equipment or aquaculture machinery and equipment
7 exempted herein must certify in writing on the copy of the invoice or
8 sales ticket to be retained by the seller that the farm machinery and
9 equipment or aquaculture machinery and equipment purchased will be
10 used only in farming, ranching or aquaculture production. Farming or
11 ranching shall include the operation of a feedlot and farm and ranch work
12 for hire and the operation of a nursery;

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

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

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

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

42 (y) all sales of materials and services used in the repairing, servicing,
43 altering, maintaining, manufacturing, remanufacturing, or modification of

1 railroad rolling stock for use in interstate or foreign commerce under
2 authority of the laws of the United States;

3 (z) all sales of tangible personal property and services purchased di-
4 rectly by a port authority or by a contractor therefor as provided by the
5 provisions of K.S.A. 12-3418 and amendments thereto;

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

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

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

- 1 tively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;
- 2 (dd) all sales of tangible personal property purchased with food
3 stamps issued by the United States department of agriculture;
- 4 (ee) all sales of lottery tickets and shares made as part of a lottery
5 operated by the state of Kansas;
- 6 (ff) on and after July 1, 1988, all sales of new mobile homes or man-
7 ufactured homes to the extent of 40% of the gross receipts, determined
8 without regard to any trade-in allowance, received from such sale. As used
9 in this subsection, “mobile homes” and “manufactured homes” shall have
10 the meanings ascribed thereto by K.S.A. 58-4202 and amendments
11 thereto;
- 12 (gg) all sales of tangible personal property purchased in accordance
13 with vouchers issued pursuant to the federal special supplemental food
14 program for women, infants and children;
- 15 (hh) all sales of medical supplies and equipment, including durable
16 medical equipment, purchased directly by a nonprofit skilled nursing
17 home or nonprofit intermediate nursing care home, as defined by K.S.A.
18 39-923, and amendments thereto, for the purpose of providing medical
19 services to residents thereof. This exemption shall not apply to tangible
20 personal property customarily used for human habitation purposes. As
21 used in this subsection, “durable medical equipment” means equipment
22 including repair and replacement parts for such equipment, but does not
23 include mobility enhancing equipment as defined in subsection (r) which
24 can withstand repeated use, is primarily and customarily used to serve a
25 medical purpose, generally is not useful to a person in the absence of
26 illness or injury and is not worn in or on the body;
- 27 (ii) all sales of tangible personal property purchased directly by a non-
28 profit organization for nonsectarian comprehensive multidiscipline youth
29 development programs and activities provided or sponsored by such or-
30 ganization, and all sales of tangible personal property by or on behalf of
31 any such organization. This exemption shall not apply to tangible personal
32 property customarily used for human habitation purposes;
- 33 (jj) all sales of tangible personal property or services, including the
34 renting and leasing of tangible personal property, purchased directly on
35 behalf of a community-based mental retardation facility or mental health
36 center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments
37 thereto, and licensed in accordance with the provisions of K.S.A. 75-
38 3307b and amendments thereto. This exemption shall not apply to tan-
39 gible personal property customarily used for human habitation purposes;
- 40 (kk) (1) (A) all sales of machinery and equipment which are used
41 in this state as an integral or essential part of an integrated production
42 operation by a manufacturing or processing plant or facility;
- 43 (B) all sales of installation, repair and maintenance services per-

- 1 formed on such machinery and equipment; and
- 2 (C) all sales of repair and replacement parts and accessories pur-
3 chased for such machinery and equipment.
- 4 (2) For purposes of this subsection:
- 5 (A) “Integrated production operation” means an integrated series of
6 operations engaged in at a manufacturing or processing plant or facility
7 to process, transform or convert tangible personal property by physical,
8 chemical or other means into a different form, composition or character
9 from that in which it originally existed. Integrated production operations
10 shall include: (i) Production line operations, including packaging opera-
11 tions; (ii) preproduction operations to handle, store and treat raw mate-
12 rials; (iii) post production handling, storage, warehousing and distribution
13 operations; and (iv) waste, pollution and environmental control opera-
14 tions, if any;
- 15 (B) “production line” means the assemblage of machinery and equip-
16 ment at a manufacturing or processing plant or facility where the actual
17 transformation or processing of tangible personal property occurs;
- 18 (C) “manufacturing or processing plant or facility” means a single,
19 fixed location owned or controlled by a manufacturing or processing busi-
20 ness that consists of one or more structures or buildings in a contiguous
21 area where integrated production operations are conducted to manufac-
22 ture or process tangible personal property to be ultimately sold at retail.
23 Such term shall not include any facility primarily operated for the purpose
24 of conveying or assisting in the conveyance of natural gas, electricity, oil
25 or water. A business may operate one or more manufacturing or proc-
26 essing plants or facilities at different locations to manufacture or process
27 a single product of tangible personal property to be ultimately sold at
28 retail;
- 29 (D) “manufacturing or processing business” means a business that
30 utilizes an integrated production operation to manufacture, process, fab-
31 ricate, finish, or assemble items for wholesale and retail distribution as
32 part of what is commonly regarded by the general public as an industrial
33 manufacturing or processing operation or an agricultural commodity
34 processing operation. (i) Industrial manufacturing or processing opera-
35 tions include, by way of illustration but not of limitation, the fabrication
36 of automobiles, airplanes, machinery or transportation equipment, the
37 fabrication of metal, plastic, wood, or paper products, electricity power
38 generation, water treatment, petroleum refining, chemical production,
39 wholesale bottling, newspaper printing, ready mixed concrete production,
40 and the remanufacturing of used parts for wholesale or retail sale. Such
41 processing operations shall include operations at an oil well, gas well, mine
42 or other excavation site where the oil, gas, minerals, coal, clay, stone, sand
43 or gravel that has been extracted from the earth is cleaned, separated,

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

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

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

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

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

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

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

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

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

1 (F) to plan, manage, control or record the receipt and flow of inven-
2 tories of raw materials, consumables and component parts, the flow of
3 the property undergoing manufacturing or processing and the manage-
4 ment of inventories of the finished product;

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

8 (H) to package the property being manufactured or processed in a
9 container or wrapping in which such property is normally sold or
10 transported;

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

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

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

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

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

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

1 processor. If the fabricator purchases such material, the fabricator shall
2 also sign the exemption certificate; and (E) a manufacturing or processing
3 business' laboratory equipment that is not located at the plant or facility,
4 but that would otherwise qualify for exemption under subsection (3)(E).

5 (5) "Machinery and equipment used as an integral or essential part
6 of an integrated production operation" shall not include:

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

12 (B) machinery, equipment and tools used primarily in maintaining
13 and repairing any type of machinery and equipment or the building and
14 plant;

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

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

23 (E) furniture and other furnishings;

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

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

30 (H) machinery and equipment used for general plant heating, cooling
31 and lighting;

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

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

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

1 exemption.

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

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

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

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

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

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

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

27 (rr) all sales of tangible personal property which will admit the pur-
28 chaser thereof to any annual event sponsored by a nonprofit organization
29 which is exempt from federal income taxation pursuant to section
30 501(c)(3) of the federal internal revenue code of 1986;

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

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

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

42 (vv) all sales of tangible personal property purchased by any of the
43 following organizations which are exempt from federal income taxation

1 pursuant to section 501 (c)(3) of the federal internal revenue code of
2 1986, for the following purposes, and all sales of any such property by or
3 on behalf of any such organization for any such purpose:

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

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

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

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

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

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

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

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

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

37 (xx) all sales of tangible personal property and services purchased by
38 a nonprofit zoo which is exempt from federal income taxation pursuant
39 to section 501(c)(3) of the federal internal revenue code of 1986, or on
40 behalf of such zoo by an entity itself exempt from federal income taxation
41 pursuant to section 501(c)(3) of the federal internal revenue code of 1986
42 contracted with to operate such zoo and all sales of tangible personal
43 property or services purchased by a contractor for the purpose of con-

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

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

42 (zz) all sales of machinery and equipment purchased by over-the-air,
43 free access radio or television station which is used directly and primarily

1 for the purpose of producing a broadcast signal or is such that the failure
2 of the machinery or equipment to operate would cause broadcasting to
3 cease. For purposes of this subsection, machinery and equipment shall
4 include, but not be limited to, that required by rules and regulations of
5 the federal communications commission, and all sales of electricity which
6 are essential or necessary for the purpose of producing a broadcast signal
7 or is such that the failure of the electricity would cause broadcasting to
8 cease;

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

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

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

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

1 furnish the number of such certificate to all suppliers from whom such
2 purchases are made, and such suppliers shall execute invoices covering
3 the same bearing the number of such certificate. Upon completion of the
4 project the contractor shall furnish to such clinic or center concerned a
5 sworn statement, on a form to be provided by the director of taxation,
6 that all purchases so made were entitled to exemption under this subsection.
7 All invoices shall be held by the contractor for a period of five years
8 and shall be subject to audit by the director of taxation. If any materials
9 purchased under such a certificate are found not to have been incorporated
10 in the building or other project or not to have been returned for
11 credit or the sales or compensating tax otherwise imposed upon such
12 materials which will not be so incorporated in the building or other project
13 reported and paid by such contractor to the director of taxation not
14 later than the 20th day of the month following the close of the month in
15 which it shall be determined that such materials will not be used for the
16 purpose for which such certificate was issued, such clinic or center concerned
17 shall be liable for tax on all materials purchased for the project,
18 and upon payment thereof it may recover the same from the contractor
19 together with reasonable attorney fees. Any contractor or any agent, employee
20 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 (ddd) on and after January 1, 1999, and before January 1, 2000, all
28 sales of materials and services purchased by any class II or III railroad as
29 classified by the federal surface transportation board for the construction,
30 renovation, repair or replacement of class II or III railroad track and
31 facilities used directly in interstate commerce. In the event any such track
32 or facility for which materials and services were purchased sales tax exempt
33 is not operational for five years succeeding the allowance of such exemption,
34 the total amount of sales tax which would have been payable except for the
35 operation of this subsection shall be recouped in accordance with rules and
36 regulations adopted for such purpose by the secretary
37 of revenue;

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

42 (fff) all sales of material handling equipment, racking systems and
43 other related machinery and equipment that is used for the handling,

1 movement or storage of tangible personal property in a warehouse or
2 distribution facility in this state; all sales of installation, repair and main-
3 tenance services performed on such machinery and equipment; and all
4 sales of repair and replacement parts for such machinery and equipment.
5 For purposes of this subsection, a warehouse or distribution facility means
6 a single, fixed location that consists of buildings or structures in a contig-
7 uous area where storage or distribution operations are conducted that are
8 separate and apart from the business' retail operations, if any, and which
9 do not otherwise qualify for exemption as occurring at a manufacturing
10 or processing plant or facility. Material handling and storage equipment
11 shall include aeration, dust control, cleaning, handling and other such
12 equipment that is used in a public grain warehouse or other commercial
13 grain storage facility, whether used for grain handling, grain storage, grain
14 refining or processing, or other grain treatment operation; and
15 (ggg) all sales of tangible personal property and services purchased
16 by or on behalf of the Kansas Academy of Science which is exempt from
17 federal income taxation pursuant to section 501(c)(3) of the federal in-
18 ternal revenue code of 1986, and used solely by such academy for the
19 preparation, publication and dissemination of education materials.
20 Sec. 2. K.S.A. 2003 Supp. 79-3606 is hereby repealed.
21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.