

SENATE BILL No. 197

By Committee on Assessment and Taxation

2-11

1 AN ACT concerning sales taxation; relating to rate; food and food
2 ingredients; food sales tax refund; amending K.S.A. 2010 Supp. 79-
3 3602, 79-3603 and 79-3635 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 79-3602 is hereby amended to read as
7 follows: 79-3602. Except as otherwise provided, as used in the Kansas
8 retailers' sales tax act:

9 (a) "Agent" means a person appointed by a seller to represent the
10 seller before the member states.

11 (b) "Agreement" means the multistate agreement entitled the
12 streamlined sales and use tax agreement approved by the streamlined
13 sales tax implementing states at Chicago, Illinois on November 12, 2002.

14 (c) "Alcoholic beverages" means beverages that are suitable for
15 human consumption and contain .05% or more of alcohol by volume.

16 (d) "Certified automated system (CAS)" means software certified
17 under the agreement to calculate the tax imposed by each jurisdiction on a
18 transaction, determine the amount of tax to remit to the appropriate state
19 and maintain a record of the transaction.

20 (e) "Certified service provider (CSP)" means an agent certified
21 under the agreement to perform all the seller's sales and use tax functions,
22 other than the seller's obligation to remit tax on its own purchases.

23 (f) "Computer" means an electronic device that accepts information
24 in digital or similar form and manipulates it for a result based on a
25 sequence of instructions.

26 (g) "Computer software" means a set of coded instructions designed
27 to cause a computer or automatic data processing equipment to perform a
28 task.

29 (h) "Delivered electronically" means delivered to the purchaser by
30 means other than tangible storage media.

31 (i) "Delivery charges" means charges by the seller of personal
32 property or services for preparation and delivery to a location designated
33 by the purchaser of personal property or services including, but not
34 limited to, transportation, shipping, postage, handling, crating and
35 packing. Delivery charges shall not include charges for delivery of direct
36 mail if the charges are separately stated on an invoice or similar billing

1 document given to the purchaser.

2 (j) "Direct mail" means printed material delivered or distributed by
3 United States mail or other delivery services to a mass audience or to
4 addressees on a mailing list provided by the purchaser or at the direction
5 of the purchaser when the cost of the items are not billed directly to the
6 recipients. Direct mail includes tangible personal property supplied
7 directly or indirectly by the purchaser to the direct mail seller for
8 inclusion in the package containing the printed material. Direct mail does
9 not include multiple items of printed material delivered to a single
10 address.

11 (k) "Director" means the state director of taxation.

12 (l) "Educational institution" means any nonprofit school, college and
13 university that offers education at a level above the twelfth grade, and
14 conducts regular classes and courses of study required for accreditation
15 by, or membership in, the north central association of colleges and
16 schools, the state board of education, or that otherwise qualify as an
17 "educational institution," as defined by K.S.A. 74-50,103, and
18 amendments thereto. Such phrase shall include: (1) A group of
19 educational institutions that operates exclusively for an educational
20 purpose; (2) nonprofit endowment associations and foundations
21 organized and operated exclusively to receive, hold, invest and administer
22 moneys and property as a permanent fund for the support and sole benefit
23 of an educational institution; (3) nonprofit trusts, foundations and other
24 entities organized and operated principally to hold and own receipts from
25 intercollegiate sporting events and to disburse such receipts, as well as
26 grants and gifts, in the interest of collegiate and intercollegiate athletic
27 programs for the support and sole benefit of an educational institution;
28 and (4) nonprofit trusts, foundations and other entities organized and
29 operated for the primary purpose of encouraging, fostering and
30 conducting scholarly investigations and industrial and other types of
31 research for the support and sole benefit of an educational institution.

32 (m) "Electronic" means relating to technology having electrical,
33 digital, magnetic, wireless, optical, electromagnetic or similar
34 capabilities.

35 (n) "Food and food ingredients" means substances, whether in
36 liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold
37 for ingestion or chewing by humans and are consumed for their taste or
38 nutritional value. "Food and food ingredients" does not include alcoholic
39 beverages, *candy, dietary supplements, food sold through vending*
40 *machines, prepared food, soft drinks* or tobacco.

41 (o) "Gross receipts" means the total selling price or the amount
42 received as defined in this act, in money, credits, property or other
43 consideration valued in money from sales at retail within this state; and

1 embraced within the provisions of this act. The taxpayer, may take credit
2 in the report of gross receipts for: (1) An amount equal to the selling price
3 of property returned by the purchaser when the full sale price thereof,
4 including the tax collected, is refunded in cash or by credit; and (2) an
5 amount equal to the allowance given for the trade-in of property.

6 (p) "Ingredient or component part" means tangible personal property
7 which is necessary or essential to, and which is actually used in and
8 becomes an integral and material part of tangible personal property or
9 services produced, manufactured or compounded for sale by the producer,
10 manufacturer or compounder in its regular course of business. The
11 following items of tangible personal property are hereby declared to be
12 ingredients or component parts, but the listing of such property shall not
13 be deemed to be exclusive nor shall such listing be construed to be a
14 restriction upon, or an indication of, the type or types of property to be
15 included within the definition of "ingredient or component part" as herein
16 set forth:

17 (1) Containers, labels and shipping cases used in the distribution of
18 property produced, manufactured or compounded for sale which are not
19 to be returned to the producer, manufacturer or compounder for reuse.

20 (2) Containers, labels, shipping cases, paper bags, drinking straws,
21 paper plates, paper cups, twine and wrapping paper used in the
22 distribution and sale of property taxable under the provisions of this act
23 by wholesalers and retailers and which is not to be returned to such
24 wholesaler or retailer for reuse.

25 (3) Seeds and seedlings for the production of plants and plant
26 products produced for resale.

27 (4) Paper and ink used in the publication of newspapers.

28 (5) Fertilizer used in the production of plants and plant products
29 produced for resale.

30 (6) Feed for animals, fowl and aquatic plants and animals, the
31 primary purpose of which is use in agriculture or aquaculture, as defined
32 in K.S.A. 47-1901, and amendments thereto, the production of food for
33 human consumption, the production of animal, dairy, poultry or aquatic
34 plant and animal products, fiber, fur, or the production of offspring for
35 use for any such purpose or purposes.

36 (q) "Isolated or occasional sale" means the nonrecurring sale of
37 tangible personal property, or services taxable hereunder by a person not
38 engaged at the time of such sale in the business of selling such property
39 or services. Any religious organization which makes a nonrecurring sale
40 of tangible personal property acquired for the purpose of resale shall be
41 deemed to be not engaged at the time of such sale in the business of
42 selling such property. Such term shall include: (1) Any sale by a bank,
43 savings and loan institution, credit union or any finance company

1 licensed under the provisions of the Kansas uniform consumer credit
2 code of tangible personal property which has been repossessed by any
3 such entity; and (2) any sale of tangible personal property made by an
4 auctioneer or agent on behalf of not more than two principals or
5 households if such sale is nonrecurring and any such principal or
6 household is not engaged at the time of such sale in the business of
7 selling tangible personal property.

8 (r) "Lease or rental" means any transfer of possession or control of
9 tangible personal property for a fixed or indeterminate term for
10 consideration. A lease or rental may include future options to purchase or
11 extend.

12 (1) Lease or rental does not include: (A) A transfer of possession or
13 control of property under a security agreement or deferred payment plan
14 that requires the transfer of title upon completion of the required
15 payments;

16 (B) a transfer or possession or control of property under an
17 agreement that requires the transfer of title upon completion of required
18 payments and payment of an option price does not exceed the greater of
19 \$100 or 1% of the total required payments; or

20 (C) providing tangible personal property along with an operator for a
21 fixed or indeterminate period of time. A condition of this exclusion is that
22 the operator is necessary for the equipment to perform as designed. For
23 the purpose of this subsection, an operator must do more than maintain,
24 inspect or set-up the tangible personal property.

25 (2) Lease or rental does include agreements covering motor vehicles
26 and trailers where the amount of consideration may be increased or
27 decreased by reference to the amount realized upon sale or disposition of
28 the property as defined in 26 U.S.C. § 7701(h)(1), *and amendments*
29 *thereto*.

30 (3) This definition shall be used for sales and use tax purposes
31 regardless if a transaction is characterized as a lease or rental under
32 generally accepted accounting principles, the internal revenue code, the
33 uniform commercial code, K.S.A. 84-1-101 et seq., and amendments
34 thereto, or other provisions of federal, state or local law.

35 (4) This definition will be applied only prospectively from the
36 effective date of this act and will have no retroactive impact on existing
37 leases or rentals.

38 (s) "Load and leave" means delivery to the purchaser by use of a
39 tangible storage media where the tangible storage media is not physically
40 transferred to the purchaser.

41 (t) "Member state" means a state that has entered in the agreement,
42 pursuant to provisions of article VIII of the agreement.

43 (u) "Model 1 seller" means a seller that has selected a CSP as its

1 agent to perform all the seller's sales and use tax functions, other than the
2 seller's obligation to remit tax on its own purchases.

3 (v) "Model 2 seller" means a seller that has selected a CAS to
4 perform part of its sales and use tax functions, but retains responsibility
5 for remitting the tax.

6 (w) "Model 3 seller" means a seller that has sales in at least five
7 member states, has total annual sales revenue of at least \$500,000,000,
8 has a proprietary system that calculates the amount of tax due each
9 jurisdiction and has entered into a performance agreement with the
10 member states that establishes a tax performance standard for the seller.
11 As used in this subsection a seller includes an affiliated group of sellers
12 using the same proprietary system.

13 (x) "Municipal corporation" means any city incorporated under the
14 laws of Kansas.

15 (y) "Nonprofit blood bank" means any nonprofit place, organization,
16 institution or establishment that is operated wholly or in part for the
17 purpose of obtaining, storing, processing, preparing for transfusing,
18 furnishing, donating or distributing human blood or parts or fractions of
19 single blood units or products derived from single blood units, whether or
20 not any remuneration is paid therefor, or whether such procedures are
21 done for direct therapeutic use or for storage for future use of such
22 products.

23 (z) "Persons" means any individual, firm, copartnership, joint
24 adventure, association, corporation, estate or trust, receiver or trustee, or
25 any group or combination acting as a unit, and the plural as well as the
26 singular number; and shall specifically mean any city or other political
27 subdivision of the state of Kansas engaging in a business or providing a
28 service specifically taxable under the provisions of this act.

29 (aa) "Political subdivision" means any municipality, agency or
30 subdivision of the state which is, or shall hereafter be, authorized to levy
31 taxes upon tangible property within the state or which certifies a levy to a
32 municipality, agency or subdivision of the state which is, or shall
33 hereafter be, authorized to levy taxes upon tangible property within the
34 state. Such term also shall include any public building commission,
35 housing, airport, port, metropolitan transit or similar authority established
36 pursuant to law and the horsethief reservoir benefit district established
37 pursuant to K.S.A. 82a-2201, and amendments thereto.

38 (bb) "Prescription" means an order, formula or recipe issued in any
39 form of oral, written, electronic or other means of transmission by a duly
40 licensed practitioner authorized by the laws of this state.

41 (cc) "Prewritten computer software" means computer software,
42 including prewritten upgrades, which is not designed and developed by
43 the author or other creator to the specifications of a specific purchaser.

1 The combining of two or more prewritten computer software programs or
2 prewritten portions thereof does not cause the combination to be other
3 than prewritten computer software. Prewritten computer software
4 includes software designed and developed by the author or other creator
5 to the specifications of a specific purchaser when it is sold to a person
6 other than the purchaser. Where a person modifies or enhances computer
7 software of which the person is not the author or creator, the person shall
8 be deemed to be the author or creator only of such person's modifications
9 or enhancements. Prewritten computer software or a prewritten portion
10 thereof that is modified or enhanced to any degree, where such
11 modification or enhancement is designed and developed to the
12 specifications of a specific purchaser, remains prewritten computer
13 software, except that where there is a reasonable, separately stated charge
14 or an invoice or other statement of the price given to the purchaser for
15 such modification or enhancement, such modification or enhancement
16 shall not constitute prewritten computer software.

17 (dd) "Property which is consumed" means tangible personal
18 property which is essential or necessary to and which is used in the actual
19 process of and consumed, depleted or dissipated within one year in: (1)
20 The production, manufacture, processing, mining, drilling, refining or
21 compounding of tangible personal property;; (2) the providing of
22 services;; (3) the irrigation of crops, for sale in the regular course of
23 business;; or (4) the storage or processing of grain by a public grain
24 warehouse or other grain storage facility, and which is not reusable for
25 such purpose. The following is a listing of tangible personal property,
26 included by way of illustration but not of limitation, which qualifies as
27 property which is consumed:

28 (A) Insecticides, herbicides, germicides, pesticides, fungicides,
29 fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and
30 chemicals for use in commercial or agricultural production, processing or
31 storage of fruit, vegetables, feeds, seeds, grains, animals or animal
32 products whether fed, injected, applied, combined with or otherwise used;

33 (B) electricity, gas and water; and

34 (C) petroleum products, lubricants, chemicals, solvents, reagents and
35 catalysts.

36 (ee) "Purchase price" applies to the measure subject to use tax and
37 has the same meaning as sales price.

38 (ff) "Purchaser" means a person to whom a sale of personal property
39 is made or to whom a service is furnished.

40 (gg) "Quasi-municipal corporation" means any county, township,
41 school district, drainage district or any other governmental subdivision in
42 the state of Kansas having authority to receive or hold moneys or funds.

43 (hh) "Registered under this agreement" means registration by a

1 seller with the member states under the central registration system
2 provided in article IV of the agreement.

3 (ii) "Retailer" means a seller regularly engaged in the business of
4 selling, leasing or renting tangible personal property at retail or furnishing
5 electrical energy, gas, water, services or entertainment, and selling only to
6 the user or consumer and not for resale.

7 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for
8 any purpose other than for resale, sublease or subrent.

9 (kk) "Sale" or "sales" means the exchange of tangible personal
10 property, as well as the sale thereof for money, and every transaction,
11 conditional or otherwise, for a consideration, constituting a sale,
12 including the sale or furnishing of electrical energy, gas, water, services
13 or entertainment taxable under the terms of this act and including, except
14 as provided in the following provision, the sale of the use of tangible
15 personal property by way of a lease, license to use or the rental thereof
16 regardless of the method by which the title, possession or right to use the
17 tangible personal property is transferred. The term "sale" or "sales" shall
18 not mean the sale of the use of any tangible personal property used as a
19 dwelling by way of a lease or rental thereof for a term of more than 28
20 consecutive days.

21 (ll) (1) "Sales or selling price" applies to the measure subject to sales
22 tax and means the total amount of consideration, including cash, credit,
23 property and services, for which personal property or services are sold,
24 leased or rented, valued in money, whether received in money or
25 otherwise, without any deduction for the following:

26 (A) The seller's cost of the property sold;

27 (B) the cost of materials used, labor or service cost, interest, losses,
28 all costs of transportation to the seller, all taxes imposed on the seller and
29 any other expense of the seller;

30 (C) charges by the seller for any services necessary to complete the
31 sale, other than delivery and installation charges;

32 (D) delivery charges; and

33 (E) installation charges.

34 (2) "Sales or selling price" includes consideration received by the
35 seller from third parties if:

36 (A) The seller actually receives consideration from a party other
37 than the purchaser and the consideration is directly related to a price
38 reduction or discount on the sale;

39 (B) the seller has an obligation to pass the price reduction or
40 discount through to the purchaser;

41 (C) the amount of the consideration attributable to the sale is fixed
42 and determinable by the seller at the time of the sale of the item to the
43 purchaser; and

1 (D) one of the following criteria is met:

2 (i) The purchaser presents a coupon, certificate or other
3 documentation to the seller to claim a price reduction or discount where
4 the coupon, certificate or documentation is authorized, distributed or
5 granted by a third party with the understanding that the third party will
6 reimburse any seller to whom the coupon, certificate or documentation is
7 presented;

8 (ii) the purchaser identifies to the seller that the purchaser is a
9 member of a group or organization entitled to a price reduction or
10 discount. A preferred customer card that is available to any patron does
11 not constitute membership in such a group; or

12 (iii) the price reduction or discount is identified as a third party price
13 reduction or discount on the invoice received by the purchaser or on a
14 coupon, certificate or other documentation presented by the purchaser.

15 (3) "Sales or selling price" shall not include:

16 (A) Discounts, including cash, term or coupons that are not
17 reimbursed by a third party that are allowed by a seller and taken by a
18 purchaser on a sale;

19 (B) interest, financing and carrying charges from credit extended on
20 the sale of personal property or services, if the amount is separately stated
21 on the invoice, bill of sale or similar document given to the purchaser;

22 (C) any taxes legally imposed directly on the consumer that are
23 separately stated on the invoice, bill of sale or similar document given to
24 the purchaser;

25 (D) the amount equal to the allowance given for the trade-in of
26 property, if separately stated on the invoice, billing or similar document
27 given to the purchaser; and

28 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash
29 rebates granted by a manufacturer to a purchaser or lessee of a new motor
30 vehicle if paid directly to the retailer as a result of the original sale.

31 (mm) "Seller" means a person making sales, leases or rentals of
32 personal property or services.

33 (nn) "Service" means those services described in and taxed under the
34 provisions of K.S.A. 79-3603, and amendments thereto.

35 (oo) "Sourcing rules" means the rules set forth in K.S.A. 2010 Supp.
36 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments
37 thereto, which shall apply to identify and determine the state and local
38 taxing jurisdiction sales or use taxes to pay, or collect and remit on a
39 particular retail sale.

40 (pp) "Tangible personal property" means personal property that can
41 be seen, weighed, measured, felt or touched, or that is in any other
42 manner perceptible to the senses. Tangible personal property includes
43 electricity, water, gas, steam and prewritten computer software.

1 (qq) "Taxpayer" means any person obligated to account to the
2 director for taxes collected under the terms of this act.

3 (rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or
4 any other item that contains tobacco.

5 (ss) "Entity-based exemption" means an exemption based on who
6 purchases the product or who sells the product. An exemption that is
7 available to all individuals shall not be considered an entity-based
8 exemption.

9 (tt) "Over-the-counter" drug means a drug that contains a label that
10 identifies the product as a drug as required by 21 C.F.R. § 201.66. The
11 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
12 statement of the active ingredients with a list of those ingredients
13 contained in the compound, substance or preparation. Over-the-counter
14 drugs do not include grooming and hygiene products such as soaps,
15 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan
16 lotions and screens.

17 (uu) "Ancillary services" means services that are associated with or
18 incidental to the provision of telecommunications services, including, but
19 not limited to, detailed telecommunications billing, directory assistance,
20 vertical service and voice mail services.

21 (vv) "Conference bridging service" means an ancillary service that
22 links two or more participants of an audio or video conference call and
23 may include the provision of a telephone number. Conference bridging
24 service does not include the telecommunications services used to reach
25 the conference bridge.

26 (ww) "Detailed telecommunications billing service" means an
27 ancillary service of separately stating information pertaining to individual
28 calls on a customer's billing statement.

29 (xx) "Directory assistance" means an ancillary service of providing
30 telephone number information or address information, or both.

31 (yy) "Vertical service" means an ancillary service that is offered in
32 connection with one or more telecommunications services, which offers
33 advanced calling features that allow customers to identify callers and to
34 manage multiple calls and call connections, including conference
35 bridging services.

36 (zz) "Voice mail service" means an ancillary service that enables the
37 customer to store, send or receive recorded messages. Voice mail service
38 does not include any vertical services that the customer may be required
39 to have in order to utilize the voice mail service.

40 (aaa) "Telecommunications service" means the electronic
41 transmission, conveyance or routing of voice, data, audio, video or any
42 other information or signals to a point, or between or among points. The
43 term telecommunications service includes such transmission, conveyance

1 or routing in which computer processing applications are used to act on
2 the form, code or protocol of the content for purposes of transmissions,
3 conveyance or routing without regard to whether such service is referred
4 to as voice over Internet protocol services or is classified by the federal
5 communications commission as enhanced or value added.

6 Telecommunications service does not include:

7 (1) Data processing and information services that allow data to be
8 generated, acquired, stored, processed or retrieved and delivered by an
9 electronic transmission to a purchaser where such purchaser's primary
10 purpose for the underlying transaction is the processed data or
11 information;

12 (2) installation or maintenance of wiring or equipment on a
13 customer's premises;

14 (3) tangible personal property;

15 (4) advertising, including, but not limited to, directory advertising;

16 (5) billing and collection services provided to third parties;

17 (6) internet access service;

18 (7) radio and television audio and video programming services,
19 regardless of the medium, including the furnishing of transmission,
20 conveyance and routing of such services by the programming service
21 provider. Radio and television audio and video programming services
22 shall include, but not be limited to, cable service as defined in 47 U.S.C.
23 § 522(6) and audio and video programming services delivered by
24 commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

25 (8) ancillary services; or

26 (9) digital products delivered electronically, including, but not
27 limited to, software, music, video, reading materials or ring tones.

28 (bbb) "800 service" means a telecommunications service that allows
29 a caller to dial a toll-free number without incurring a charge for the call.
30 The service is typically marketed under the name 800, 855, 866, 877 and
31 888 toll-free calling, and any subsequent numbers designated by the
32 federal communications commission.

33 (ccc) "900 service" means an inbound toll telecommunications
34 service purchased by a subscriber that allows the subscriber's customers
35 to call in to the subscriber's prerecorded announcement or live service.
36 900 service does not include the charge for collection services provided
37 by the seller of the telecommunications services to the subscriber, or
38 service or product sold by the subscriber to the subscriber's customer. The
39 service is typically marketed under the name 900 service, and any
40 subsequent numbers designated by the federal communications
41 commission.

42 (ddd) "Value-added non-voice data service" means a service that
43 otherwise meets the definition of telecommunications services in which

1 computer processing applications are used to act on the form, content,
2 code or protocol of the information or data primarily for a purpose other
3 than transmission, conveyance or routing.

4 (eee) "International" means a telecommunications service that
5 originates or terminates in the United States and terminates or originates
6 outside the United States, respectively. United States includes the District
7 of Columbia or a U.S. territory or possession.

8 (fff) "Interstate" means a telecommunications service that originates
9 in one United States state, or a United States territory or possession, and
10 terminates in a different United States state or a United States territory or
11 possession.

12 (ggg) "Intrastate" means a telecommunications service that
13 originates in one United States state or a United States territory or
14 possession, and terminates in the same United States state or a United
15 States territory or possession.

16 (hhh) *"Candy" means a preparation of sugar, honey or other natural
17 or artificial sweeteners in combination with chocolate, fruits, nuts or
18 other ingredients or flavorings in the form of bars, drops or pieces.
19 Candy shall not include any preparation containing flour and shall
20 require no refrigeration.*

21 (iii) *"Food sold through vending machines" means food dispensed
22 from a machine or other mechanical device that accepts payment.*

23 (jjj) (1) *"Prepared food" means any of the following:*

24 (A) *Food sold in a heated state or heated by the seller;*

25 (B) *two or more food ingredients mixed or combined by the seller
26 for sale as a single item; or*

27 (C) *food sold with eating utensils provided by the seller, including
28 plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate
29 does not include a container or packaging used to transport the food.*

30 (2) *"Prepared food" does not include:*

31 (A) *Food that is only cut, repackaged or pasteurized by the seller;*

32 (B) *eggs, fish, meat, poultry and foods containing these raw animal
33 foods requiring cooking by the consumer as recommended by the United
34 States food and drug administration, in chapter 3, part 401.11 of its food
35 code, so as to prevent foodborne illnesses;*

36 (C) *if sold without eating utensils provided by the seller; bakery
37 items, including breads, rolls, buns, biscuits, bagels, croissants, pastries,
38 donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and
39 tortillas; or*

40 (D) *food sold by a seller whose primary North American industry
41 classification system, United States, 2002 edition, classification is
42 manufacturing in sector 311, except subsector 3118.*

43 (lll) *"Soft drinks" means nonalcoholic beverages that contain*

1 *natural or artificial sweeteners. "Soft drinks" does not include beverages*
2 *that contain milk or milk products; soy, rice or similar milk substitutes;*
3 *or greater than 50% of vegetable or fruit juice by volume.*

4 Sec. 2. K.S.A. 2010 Supp. 79-3603 is hereby amended to read as
5 follows: 79-3603. For the privilege of engaging in the business of selling
6 tangible personal property at retail in this state or rendering or furnishing
7 any of the services taxable under this act, there is hereby levied and there
8 shall be collected and paid a tax at the rate of 5.3%, and commencing July
9 1, 2010, at the rate of 6.3%, and commencing July 1, 2013, at the rate of
10 5.7%. Within a redevelopment district established pursuant to K.S.A. 74-
11 8921, and amendments thereto, there is hereby levied and there shall be
12 collected and paid an additional tax at the rate of 2% until the earlier of
13 the date the bonds issued to finance or refinance the redevelopment
14 project have been paid in full or the final scheduled maturity of the first
15 series of bonds issued to finance any part of the project upon:

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

18 (b) the gross receipts from intrastate, interstate or international
19 telecommunications services and any ancillary services sourced to this
20 state in accordance with K.S.A. 2010 Supp. 79-3673, and amendments
21 thereto, except that telecommunications service does not include: (1) Any
22 interstate or international 800 or 900 service; (2) any interstate or
23 international private communications service as defined in K.S.A. 2010
24 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
25 data service; (4) any telecommunication service to a provider of
26 telecommunication services which will be used to render
27 telecommunications services, including carrier access services; or (5) any
28 service or transaction defined in this section among entities classified as
29 members of an affiliated group as provided by section 1504 of the federal
30 internal revenue code of 1986, as in effect on January 1, 2001;

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

1 fee collected by a water supplier as a condition for establishing service; or
2 (3) connection or reconnection fees collected by a water supplier;

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

7 (e) the gross receipts from the sale of admissions to any place
8 providing amusement, entertainment or recreation services including
9 admissions to state, county, district and local fairs, but such tax shall not
10 be levied and collected upon the gross receipts received from sales of
11 admissions to any cultural and historical event which occurs triennially;

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

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

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

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

37 (j) the gross receipts from the rendering of the services of washing
38 and washing and waxing of vehicles;

39 (k) the gross receipts from cable, community antennae and other
40 subscriber radio and television services;

41 (l) (1) except as otherwise provided by paragraph (2), the gross
42 receipts received from the sales of tangible personal property to all
43 contractors, subcontractors or repairmen for use by them in erecting

1 structures, or building on, or otherwise improving, altering, or repairing
2 real or personal property.

3 (2) Any such contractor, subcontractor or repairman who maintains
4 an inventory of such property both for sale at retail and for use by them
5 for the purposes described by paragraph (1) shall be deemed a retailer
6 with respect to purchases for and sales from such inventory, except that
7 the gross receipts received from any such sale, other than a sale at retail,
8 shall be equal to the total purchase price paid for such property and the
9 tax imposed thereon shall be paid by the deemed retailer;

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

24 (n) the gross receipts received from dues charged by public and
25 private clubs, drinking establishments, organizations and businesses,
26 payment of which entitles a member to the use of facilities for recreation
27 or entertainment, but such tax shall not be levied and collected upon the
28 gross receipts received from: (1) Dues charged by any organization
29 exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth*
30 of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships
31 in a nonprofit organization which is exempt from federal income taxation
32 pursuant to section 501 (c)(3) of the federal internal revenue code of
33 1986, and whose purpose is to support the operation of a nonprofit zoo;

34 (o) the gross receipts received from the isolated or occasional sale of
35 motor vehicles or trailers but not including: (1) The transfer of motor
36 vehicles or trailers by a person to a corporation or limited liability
37 company solely in exchange for stock securities or membership interest
38 in such corporation or limited liability company; or (2) the transfer of
39 motor vehicles or trailers by one corporation or limited liability company
40 to another when all of the assets of such corporation or limited liability
41 company are transferred to such other corporation or limited liability
42 company; or (3) the sale of motor vehicles or trailers which are subject to
43 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and

1 amendments thereto, by an immediate family member to another
2 immediate family member. For the purposes of clause (3), immediate
3 family member means lineal ascendants or descendants, and their
4 spouses. Any amount of sales tax paid pursuant to the Kansas retailers
5 sales tax act on the isolated or occasional sale of motor vehicles or trailers
6 on and after July 1, 2004, which the base for computing the tax was the
7 value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105,
8 and amendments thereto, when such amount was higher than the amount
9 of sales tax which would have been paid under the law as it existed on
10 June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure
11 prescribed by this section. Such refund shall be in an amount equal to the
12 difference between the amount of sales tax paid by the taxpayer and the
13 amount of sales tax which would have been paid by the taxpayer under
14 the law as it existed on June 30, 2004. Each claim for a sales tax refund
15 shall be verified and submitted not later than six months from the
16 effective date of this act to the director of taxation upon forms furnished
17 by the director and shall be accompanied by any additional
18 documentation required by the director. The director shall review each
19 claim and shall refund that amount of tax paid as provided by this act. All
20 such refunds shall be paid from the sales tax refund fund, upon warrants
21 of the director of accounts and reports pursuant to vouchers approved by
22 the director of taxation or the director's designee. No refund for an
23 amount less than \$10 shall be paid pursuant to this act. In determining the
24 base for computing the tax on such isolated or occasional sale, the fair
25 market value of any motor vehicle or trailer traded in by the purchaser to
26 the seller may be deducted from the selling price;

27 (p) the gross receipts received for the service of installing or
28 applying tangible personal property which when installed or applied is
29 not being held for sale in the regular course of business, and whether or
30 not such tangible personal property when installed or applied remains
31 tangible personal property or becomes a part of real estate, except that no
32 tax shall be imposed upon the service of installing or applying tangible
33 personal property in connection with the original construction of a
34 building or facility, the original construction, reconstruction, restoration,
35 remodeling, renovation, repair or replacement of a residence or the
36 construction, reconstruction, restoration, replacement or repair of a bridge
37 or highway.

38 For the purposes of this subsection:

39 (1) "Original construction" shall mean the first or initial construction
40 of a new building or facility. The term "original construction" shall
41 include the addition of an entire room or floor to any existing building or
42 facility, the completion of any unfinished portion of any existing building
43 or facility and the restoration, reconstruction or replacement of a building,

1 facility or utility structure damaged or destroyed by fire, flood, tornado,
2 lightning, explosion, windstorm, ice loading and attendant winds,
3 terrorism or earthquake, but such term, except with regard to a residence,
4 shall not include replacement, remodeling, restoration, renovation or
5 reconstruction under any other circumstances;

6 (2) "building" shall mean only those enclosures within which
7 individuals customarily are employed, or which are customarily used to
8 house machinery, equipment or other property, and including the land
9 improvements immediately surrounding such building;

10 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
11 well, feedlot or any conveyance, transmission or distribution line of any
12 cooperative, nonprofit, membership corporation organized under or
13 subject to the provisions of K.S.A. 17-4601 et seq., and amendments
14 thereto, or municipal or quasi-municipal corporation, including the land
15 improvements immediately surrounding such facility;

16 (4) "residence" shall mean only those enclosures within which
17 individuals customarily live;

18 (5) "utility structure" shall mean transmission and distribution lines
19 owned by an independent transmission company or cooperative, the
20 Kansas electric transmission authority or natural gas or electric public
21 utility; and

22 (6) "windstorm" shall mean straight line winds of at least 80 miles
23 per hour as determined by a recognized meteorological reporting agency
24 or organization;

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

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

36 (s) on and after January 1, 2005, the gross receipts received from the
37 sale of prewritten computer software and the sale of the services of
38 modifying, altering, updating or maintaining prewritten computer
39 software, whether the prewritten computer software is installed or
40 delivered electronically by tangible storage media physically transferred
41 to the purchaser or by load and leave;

42 (t) the gross receipts received for telephone answering services;

43 (u) the gross receipts received from the sale of prepaid calling

1 service and prepaid wireless calling service as defined in K.S.A. 2010
2 Supp. 79-3673, and amendments thereto; ~~and~~

3 (v) the gross receipts received from the sales of bingo cards, bingo
4 faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq.,
5 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,
6 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before
7 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo
8 faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq.,
9 and amendments thereto, shall be exempt from taxes imposed pursuant to
10 this section; *and*

11 (w) *the gross receipts from the sale of food and food ingredients*
12 *shall be taxed:*

13 (1) *Commencing July 1, 2011, at the rate of 5.04%;*

14 (2) *commencing July 1, 2012, at the rate of 4.78%;*

15 (3) *commencing July 1, 2013, at the rate of 3.52%;*

16 (4) *commencing July 1, 2014, at the rate of 1.26%; and*

17 (5) *commencing July 1, 2015, and thereafter, at the rate of 0%.*

18 Sec. 3. K.S.A. 2010 Supp. 79-3635 is hereby amended to read as
19 follows: 79-3635. (a) (1) A claimant shall be entitled to a refund of
20 retailers' sales taxes paid upon food during the calendar year 2010 and
21 each year thereafter in the amount hereinafter provided. There shall be
22 allowed for each member of a household of a claimant having income of
23 \$17,500 or less, *for calendar year 2010, an amount equal to \$90; for*
24 *calendar year 2011, an amount equal to \$72; for calendar year 2012, an*
25 *amount equal to \$54; for calendar year 2013, an amount equal to \$36;*
26 *for calendar year 2014, an amount equal to \$18.* There shall be allowed
27 for each member of a household of a claimant having income of more
28 than \$17,500 but not more than \$35,000, *for calendar year 2010, an*
29 *amount equal to \$45; for calendar year 2011, an amount equal to \$36;*
30 *for calendar year 2012, an amount equal to \$27; for calendar year 2013,*
31 *an amount equal to \$18; for calendar year 2014, an amount equal to \$9.*
32 There shall be allowed for a claimant who qualifies for an additional
33 personal exemption amount pursuant to K.S.A. 79-32,121, and
34 amendments thereto, an additional amount of ~~\$45 or \$90, as the case~~
35 ~~requires~~ *equal to the amount the claimant otherwise qualifies under the*
36 *provisions of this subsection.* All such claims shall be paid from the sales
37 tax refund fund upon warrants of the director of accounts and reports
38 pursuant to vouchers approved by the director of taxation or by a person
39 or persons designated by the director.

40 (2) As an alternative to the procedure described by subsection (a)(1),
41 for all taxable years commencing after December 31, 2009, there shall be
42 allowed as a credit against the tax liability of a resident individual
43 imposed under the Kansas income tax act an amount equal to ~~\$45 or \$90,~~

1 ~~as the case requires~~ *the amount the claimant otherwise qualifies under*
2 *the provisions of subsection (a)*, for each member of a household. There
3 shall be allowed for a claimant who qualifies for an additional personal
4 exemption amount pursuant to K.S.A. 79-32,121, and amendments
5 thereto, an additional amount of \$45 or \$90, ~~as the case requires~~ *equal to*
6 *the amount the claimant otherwise qualifies under the provisions of*
7 *subsection (a)*. If the amount of such tax credit exceeds the claimant's
8 income tax liability for such taxable year, such excess amount shall be
9 refunded to the claimant.

10 (b) A head of household shall make application for refunds for all
11 members of the same household upon a common form provided for the
12 making of joint claims. All claims paid to members of the same
13 household shall be paid as a joint claim by means of a single warrant.

14 (c) No claim for a refund of taxes under the provisions of K.S.A. 79-
15 3632 et seq., and amendments thereto, shall be paid or allowed unless
16 such claim is actually filed with and in the possession of the department
17 of revenue on or before April 15 of the year next succeeding the year in
18 which such taxes were paid. The director of taxation may: (1) Extend the
19 time for filing any claim under the provisions of this act when good cause
20 exists therefor; or (2) accept a claim filed after the deadline for filing in
21 the case of sickness, absence or disability of the claimant if such claim
22 has been filed within four years of such deadline.

23 (d) In the case of all tax years commencing after December 31,
24 2010, the threshold income amounts prescribed in this section and
25 subsection (c) of K.S.A. 79-3633, and amendments thereto, and the
26 amounts of refund of taxes and the amounts of the tax credit, both as
27 prescribed in this section, shall be increased by an amount equal to such
28 threshold amount multiplied by the cost-of-living adjustment determined
29 under section 1 (f)(3) of the federal internal revenue code for the calendar
30 year in which the taxable year commences.

31 (e) *No refund shall be allowed pursuant to this section for calendar*
32 *year 2015 and thereafter.*

33 Sec. 4. K.S.A. 2010 Supp. 79-3602, 79-3603 and 79-3635 are
34 hereby repealed.

35 Sec. 5. This act shall take effect and be in force from and after its
36 publication in the statute book.

37