

HOUSE BILL No. 2005

AN ACT concerning taxation; amending K.S.A. 12-188, 12-189a, 12-191, 12-192, 12-198, 72-6431, 74-2433, 75-5151, 79-3607, 79-3608 and 79-3651 and K.S.A. 2002 Supp. 12-187, 12-189, 79-201x, 79-15,101, 79-15,102, 79-15,103, 79-15,109 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b, 79-32,100c, 79-32,206, 79-3602, 79-3603, 79-3606 and 79-3650 and repealing the existing sections; also repealing K.S.A. 12-191a, 79-15,106, 79-15,107, 79-15,108, 79-15,114, 79-15,115 and 79-15,127.

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

Section 1. On and after July 1, 2003, K.S.A. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers' sales tax, shall also be subject to such county or city retail sales tax. Except as hereinafter provided, all retail sales, for the purpose of this act, shall be considered to have been consummated at the ~~place of business of the retailer~~ *location determined by the sourcing rules as provided in section 16, and amendments thereto. The retail sales or transfer of watercraft, modular homes, manufactured homes or mobile homes, shall be considered consummated at the place of business of the retailer and sourced to such location. The retail sale, excluding the lease or rental, of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of section 16, and amendments thereto, shall be considered consummated at the place of business of the retailer and sourced to such location. The isolated or occasional sale of any motor vehicle or trailer shall be considered consummated at the taxing jurisdiction where the sale is made. If the sale negotiations occurred in different cities or counties, the situs of the sale for local sales tax purposes shall be the place where the motor vehicle or trailer was kept at the time negotiations were first entered into. In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of revenue which rules and regulations shall be considered with state and federal law insofar as applicable. Retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service or services taxed under subsection (k) of K.S.A. 79-3603, and amendments thereto, shall be considered to have been consummated at the situs of the subscriber billed therefor. Retail sales involving the leasing of telecommunication or data processing equipment commonly used in connection with telephone services shall be considered to have been consummated at the situs of the lessee. Retail sales involving the furnishing of services taxable under subsections (p), (q) and (r) of K.S.A. 79-3603, and amendments thereto, pursuant to a contract under which the sale of such services and the furnishing of tangible personal property exceeds \$10,000 per contract per contractor shall be considered to have been consummated at the situs where such services are performed.* The director of taxation is hereby authorized to request and receive from any retailer or from any city or county levying the tax such information as may be reasonably necessary to determine the liability of retailers for any county or city sales tax. The collection of any sales tax of a county or city approved at any election shall commence on the first day of the calendar quarter next following the 90th day after the date that the city or county has provided written notice to the director of taxation of the election authorizing the levy of such tax. *The collection of any such sales tax applicable to printed catalog purchases wherein the purchaser computed the tax based upon local tax rates published in the catalog, shall not commence until the first day of the calendar quarter next following the 150th day after the date that the city or county has provided written notice to the director of taxation of the election authorizing the levy of such tax. The director of taxation shall provide notice to sellers of such taxes within 30 days after receiving such notice from the city or county.*

A city retailers' sales tax shall not become effective within any area annexed by a city levying such tax until the first day of the calendar quarter next following the 90th day after the date that the governing body of such city provided the state department of revenue with a certified copy of the annexation ordinance and a map of the city detailing the annexed area.

The director of taxation shall provide notice to sellers of such tax within 30 days after receiving such notice from the city or county.

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

Sec. 2. On and after July 1, 2003, K.S.A. 12-192 is hereby amended to read as follows: 12-192. (a) Except as otherwise provided by subsection (b), (d) or (h), all revenue received by the director of taxation from a countywide retailers' sales tax shall be apportioned among the county and each city located in such county in the following manner: (1) One-half of all revenue received by the director of taxation shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year, and (2) $\frac{1}{2}$ of all revenue received by the director of taxation from such countywide retailers' sales tax shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county, except that no persons residing within the Fort Riley military reservation shall be included in the determination of the population of any city located within Riley county. All revenue apportioned to a county shall be paid to its county treasurer and shall be credited to the general fund of the county.

(b) (1) As an alternative and in lieu of the apportionment formula provided in subsection (a), all revenue received by the director of taxation from a countywide retailers' sales tax imposed within Johnson county at the rate of .75% or 1% after the effective date of this act may be apportioned among the county and each city located in such county in the following manner: (A) The revenue received from the first .5% rate of tax shall be apportioned in the manner prescribed by subsection (a) and (B) the revenue received from the rate of tax exceeding .5% shall be apportioned as follows: (i) One-fourth shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year and (ii) one-fourth shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county and (iii) one-half shall be retained by the county for its sole use and benefit.

(2) In lieu of the apportionment formula provided in subsection (a), all money received by the director of taxation from a countywide sales tax imposed within Montgomery county pursuant to the election held on November 8, 1994, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged. All revenue apportioned and paid from the imposition of such tax to the treasurer of any city prior to the effective date of this act shall be remitted to the county treasurer and expended only for the purpose for which the revenue received from the tax was pledged.

(c) (1) Except as otherwise provided by paragraph (2) of this subsection, for purposes of subsections (a) and (b), the term "total tangible property tax levies" means the aggregate dollar amount of tax revenue derived from ad valorem tax levies applicable to all tangible property located within each such city or county. The ad valorem property tax levy of any county or city district entity or subdivision shall be included within

this term if the levy of any such district entity or subdivision is applicable to all tangible property located within each such city or county.

(2) For the purposes of subsections (a) and (b), any ad valorem property tax levied on property located in a city in Johnson county for the purpose of providing fire protection service in such city shall be included within the term “total tangible property tax levies” for such city regardless of its applicability to all tangible property located within each such city. If the tax is levied by a district which extends across city boundaries, for purposes of this computation, the amount of such levy shall be apportioned among each city in which such district extends in the proportion that such tax levied within each city bears to the total tax levied by the district.

(d) (1) All revenue received from a countywide retailers’ sales tax imposed pursuant to paragraphs (2), (6), (7), (8) ~~or~~, (9) *or* (12) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(2) Except as otherwise provided in paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, all revenues received from a countywide retailers’ sales tax imposed pursuant to paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(e) All revenue apportioned to the several cities of the county shall be paid to the respective treasurers thereof and deposited in the general fund of the city. Whenever the territory of any city is located in two or more counties and any one or more of such counties do not levy a countywide retailers’ sales tax, or whenever such counties do not levy countywide retailers’ sales taxes at a uniform rate, the revenue received by such city from the proceeds of the countywide retailers’ sales tax, as an alternative to depositing the same in the general fund, may be used for the purpose of reducing the tax levies of such city upon the taxable tangible property located within the county levying such countywide retailers’ sales tax.

(f) Prior to March 1 of each year, the secretary of revenue shall advise each county treasurer of the revenue collected in such county from the state retailers’ sales tax for the preceding calendar year.

(g) Prior to December 31 of each year, the clerk of every county imposing a countywide retailers’ sales tax shall provide such information deemed necessary by the secretary of revenue to apportion and remit revenue to the counties and cities pursuant to this section.

(h) The provisions of subsections (a) and (b) for the apportionment of countywide retailers’ sales tax shall not apply to any revenues received pursuant to a county or countywide retailers’ sales tax levied or collected under K.S.A. ~~2001-Supp.~~ 74-8929, and amendments thereto. All such revenue collected under K.S.A. ~~2001-Supp.~~ 74-8929, and amendments thereto, shall be deposited into the redevelopment bond fund established by K.S.A. ~~2001-Supp.~~ 74-8927, and amendments thereto, for the period of time set forth in K.S.A. ~~2001-Supp.~~ 74-8927, and amendments thereto.

Sec. 3. On and after July 1, 2003, K.S.A. 12-198 is hereby amended to read as follows: 12-198. (a) A compensating use tax for the privilege of using or storing within a city or county any *tangible personal property or any* vehicle which is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or any vessel, as defined by K.S.A. 82a-802, and amendments thereto, is hereby imposed by every city, county or municipal university imposing a retailers’ sales tax. The rate of any such tax shall be fixed at the same rate as such city’s, county’s or university’s retailers’ sales tax. Any city, county or municipal university imposing a compensating use tax is prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Such tax shall be identical in its application and exemptions therefrom to the Kansas compensating tax, and all laws and rules and regulations of the state department of revenue relating to the Kansas compensating tax shall apply to such local compensating use tax insofar as the same may be made applicable.

(b) The secretary of revenue is authorized to administer, enforce and

collect a city's, county's or municipal university's compensating use tax and to adopt such rules and regulations necessary for the efficient and effective administration, enforcement and collection thereof. The state director of taxation shall cause such taxes to be collected within the boundaries of such taxing subdivision at the same time and in the same manner provided for the collection of the state compensating use tax. All moneys collected by the director of taxation pursuant to the provisions of this section shall be credited to the city and county compensating use tax fund or to the municipal university compensating use tax fund, which funds are hereby established in the state treasury. Any refund due on any city's, county's municipal university's compensating use tax collected pursuant to this section shall be paid out of the sales tax refund fund and reimbursement to such fund shall be made by the director of taxation from collections of local compensating use tax revenue. All moneys collected pursuant to this section for a city or county shall be remitted at least quarterly by the state treasurer to the treasurer of such city, county or university.

(c) All revenue received by any county treasurer from a countywide compensating use tax shall be apportioned among the county and each city located in such county in the same manner as provided in K.S.A. 12-192, and amendments thereto, for the apportionment of revenue received from a countywide retailers' sales tax.

Sec. 4. On and after July 1, 2003, K.S.A. 75-5151 is hereby amended to read as follows: 75-5151. The secretary of revenue may require, consistent with sound cash management policies, that any taxpayer whose total sales tax liability exceeds \$100,000 in any calendar year, any taxpayer whose total withholding tax liability exceeds \$100,000 in any calendar year, and any person owing any taxes or fees in connection with any return, report or document other than for sales tax or withholding tax liability, shall remit their tax liability by electronic funds transfer no later than the date required for such remittance except that the secretary may adopt rules and regulations prescribing alternative filing and payment dates not later than the last day of the month in which the tax was otherwise due. Electronic funds transfers may be made by wire transfers of funds through the federal reserve system or by any other means established by the secretary, with the approval of the state treasurer, which insures the availability of such funds to the state on the date of payment. Evidence of such payment shall be furnished to the secretary on or before the due date of the tax as established by law. Failure to timely make such payment in immediately available funds or failure to provide such evidence of payment in a timely manner shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. *All sales and use tax remittances from model 1, 2 and 3 sellers must be remitted electronically. Any data that accompanies a remittance must be formatted using uniform tax type and payment type codes approved by the secretary.*

Sec. 5. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3602 is hereby amended to read as follows: 79-3602. ~~(a) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number, and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.~~

~~—(b) "Director" means the state director of taxation.~~

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

~~—(d) "Retailer" means a person regularly engaged in the business of~~

~~selling tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.~~

~~—(c) “Retail sale” or “sale at retail” means all sales made within the state of tangible personal property or electrical energy, gas, water, services or entertainment for use or consumption and not for resale.~~

~~—(f) “Tangible personal property” means corporeal personal property. Such term shall include: (1) Any computer software program which is not a custom computer software program, as described by subsection (s) of K.S.A. 79-3603, and amendments thereto; and (2) any prepaid telephone calling card or prepaid authorization number, or recharge of such card or number, as described by subsection (b) of K.S.A. 79-3603, and amendments thereto.~~

~~—(g) “selling price” means the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer.~~

~~—(h) “Gross receipts” means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for: (1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit, and (2) an amount equal to the allowance given for the trade-in of property.~~

~~—(i) “Taxpayer” means any person obligated to account to the director for taxes collected under the terms of this act.~~

~~—(j) “Isolated or occasional sale” means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.~~

~~—(k) “Service” means those services described in and taxed under the provisions of K.S.A. 79-3603 and amendments thereto.~~

~~—(1) “Ingredient or component part” means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of “ingredient or component part” as herein set forth:~~

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

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

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

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

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

~~—(6) Feed for animals, fowl and aquatic plants and animals, the primary~~

purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber, fur, or the production of offspring for use for any such purpose or purposes.

—(m)—“Property which is consumed” means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services, (3) the irrigation of crops, for sale in the regular course of business, or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

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

—(B)—electricity, gas and water; and

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

—(n)—“Political subdivision” means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law.

—(o)—“Municipal corporation” means any city incorporated under the laws of Kansas.

—(p)—“Quasi-municipal corporation” means any county, township, school district, drainage district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

—(q)—“Nonprofit blood bank” means any nonprofit place, organization, institution or establishment that is operated wholly or in part for the purpose of obtaining, storing, processing, preparing for transfusing, furnishing, donating or distributing human blood or parts or fractions of single blood units or products derived from single blood units, whether or not any remuneration is paid therefor, or whether such procedures are done for direct therapeutic use or for storage for future use of such products.

—(r)—“Educational institution” means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an “educational institution,” as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

Except as otherwise provided, as used in the Kansas retailers' sales tax act:

(a) “Agent” means a person appointed by a seller to represent the seller before the member states.

(b) “Agreement” means the multistate agreement entitled the stream-

lined sales and use tax agreement approved by the streamlined sales tax implementing states at Chicago, Illinois on November 12, 2002.

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

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

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

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

(g) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(h) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

(i) “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

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

(k) “Director” means the state director of taxation.

(l) “Educational institution” means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an “educational institution,” as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

(m) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(n) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages or tobacco.

(o) “Gross receipts” means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for: (1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit; and (2) an amount equal to the allowance given for the trade-in of property.

(p) “Ingredient or component part” means tangible personal property

which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of “ingredient or component part” as herein set forth:

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

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

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

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

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

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

(q) “Isolated or occasional sale” means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is non-recurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

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

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

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

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

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

(3) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uni-

form commercial code, K.S.A. 84-101 *et seq.* and amendments thereto, or other provisions of federal, state or local law.

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

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

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

(u) “Model 1 seller” means a seller that has selected a CSP as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

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

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

(x) “Municipal corporation” means any city incorporated under the laws of Kansas.

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

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

(aa) “Political subdivision” means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law.

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

(cc) “Prewritten computer software” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software, except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

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

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

(B) electricity, gas and water; and

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

(ee) “Purchase price” applies to the measure subject to use tax and has the same meaning as sales price.

(ff) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

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

(hh) “Registered under this agreement” means registration by a seller with the member states under the central registration system provided in article IV of the agreement.

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

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

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

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

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

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

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

(D) delivery charges;

(E) installation charges; and

(F) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(2) “Sales or selling price” shall not include:

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

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

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

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

(mm) “Seller” means a person making sales, leases or rentals of personal property or services.

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

(oo) “Sourcing rules” means the rules set forth in sections 16 through 19, K.S.A. 12-191 and 12-191a, and amendments thereto, which shall apply to identify and determine the state and local taxing jurisdiction sales or use taxes to pay, or collect and remit on a particular retail sale.

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

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

(rr) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

Sec. 6. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

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

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer’s telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer’s telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001. ~~For the purposes of this subsection the term gross receipts does not include purchases of telephone, telegraph or telecommunications using a prepaid telephone calling card or prepaid authorization number. As used in this subsection, a prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether man-~~

ually or electronically dialed; and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, *except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%*, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

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

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

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

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

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

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

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

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

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

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

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

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

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

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

property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) “Original construction” shall mean the first or initial construction of a new building or facility. The term “original construction” shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

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

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

(4) “residence” shall mean only those enclosures within which individuals customarily live;

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

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

(s) the gross receipts received from the sale of computer software, *the sale of the service of providing computer software other than pre-written computer software* and the sale of the services of modifying, altering, updating or maintaining computer software. ~~As used in this subsection, “computer software” means information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software, whether the computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;~~

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers. A prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number

~~or authorization code or both, whether manually or electronically dialed. If the sale or recharge of such card or number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address, if there is no item shipped then it shall be the customer's billing address calling service as defined in section 19, and amendments thereto; and~~

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

Sec. 7. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

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

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is

paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, “funds of a political subdivision” shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any build-

ing or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

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

(g) sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using directly or through an authorized agent such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

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

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

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

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the

supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

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

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

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

(r) all sales of ~~prosthetic devices and orthopedic appliances~~ *mobility enhancing equipment* prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection, ~~the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, used to alleviate the malfunction of any part of the body, or used to assist any disabled person in leading a normal life by facilitating such person's mobility, such term shall include accessories attached or to be attached to motor vehicles, but such term shall not include motor vehicles or personal property which when installed becomes a fixture to real property;~~ *(1) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) "prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;*

(s) except as provided in K.S.A. 2002 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.* and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a

water supply district organized or operating under the authority of K.S.A. 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term “farm machinery and equipment or aquaculture machinery and equipment” shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

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

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

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

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

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

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

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

(cc) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto. As used in this subsection, “business” and “retail business” have the meanings respectively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

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

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

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

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

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

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of

any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

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

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

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

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

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

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

(D) “manufacturing or processing business” means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grind-

ing, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

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

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

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

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

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

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

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

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

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

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

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer’s production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer’s production operations;

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

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

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

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

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

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

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

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

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

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

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

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

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

(I) motor vehicles that are registered for operation on public highways; or

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

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall deter-

mine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

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

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

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

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

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

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

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

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

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

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

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

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

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

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

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

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

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

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

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

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon

conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

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

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms

furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

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

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track

or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

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

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation; and

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

Sec. 8. On and after July 1, 2003, K.S.A. 79-3607 is hereby amended to read as follows: 79-3607. (a) Retailers shall make returns to the director at the times prescribed by this section upon forms prescribed and furnished by the director stating: (1) The name and address of the retailer; (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made; (3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made; (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales; (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made; (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made; (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed. The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included

the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed \$1,600 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds \$1,600 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

(b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows: (1) Upon registration, the director shall provide to the seller the returns required;

(2) seller shall file a return anytime within one year of the month of initial registration, and future returns are required on an annual basis in succeeding years; and

(3) in addition to the returns required in subsection (b)(2), sellers are required to submit returns in the month following any month in which they have accumulated state and local sales tax funds for this state in the amount of \$1,600 or more.

Sec. 9. On and after July 1, 2003, K.S.A. 79-3608 is hereby amended to read as follows: 79-3608. *(a) Except as otherwise provided, it shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing taxable services in this state without a registration certificate from the director of taxation. Application for such certificate shall be made to the director upon forms furnished by the director, and shall state the name of the applicant, the address or addresses at which the applicant proposes to engage in such business, and the character of such business. Utilities taxable under this act shall not be required to register but shall comply with all other provisions of this act. The taxpayer may be registered by an agent. Such appointment of the agent by the taxpayer shall be in writing and submitted to the director.*

The taxpayer shall be issued a registration certificate to engage in the business for which application is made unless the applicant at the time of making such application owes any sales tax, penalty or interest, and in such case, before a registration certificate is issued, the director of taxation shall require the applicant to pay the amount owed.

(b) A separate registration certificate shall be issued for each place of business, and shall be conspicuously displayed therein.

(c) *A seller registering under the agreement is considered registered in this state and shall not be required to pay any registration fees or other charges to register in this state if the seller has no legal requirement to register. A written signature from the seller registering under the agreement is not required. An agent may register a seller under uniform procedures determined by the secretary. A seller may cancel its registration under the system at any time under uniform procedures determined by the secretary. Cancellation does not relieve the seller of its liability for remitting to this state any taxes collected.*

Sec. 10. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3650 is hereby amended to read as follows: 79-3650. (a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) Paid the tax directly to the department; (2) provides evidence that the retailer refused or was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser's or consumer's refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in the retailer's possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be refunded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2002 Supp. 79-3615(h), and amendments thereto.

(b) *A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request. In connection with a purchaser's request from a seller for over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the state and has remitted to the state all taxes collected less any deductions, credits or collection allowances.* If the director of taxation finds upon proper showing that a consumer or purchaser submitted a refund request to a retailer that was not acted upon by the retailer in a timely manner, the director shall extend the time for filing the request with the department beyond the three year limitation period that is otherwise provided by the time attributed to the delay caused by the retailer.

Sec. 11. On and after July 1, 2003, K.S.A. 79-3651 is hereby amended to read as follows: 79-3651. (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the ~~vendor~~ seller unless the ~~vendor~~ seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the ~~vendor~~ seller from collecting and remitting tax ~~when taken in good faith. A vendor shall be presumed to have accepted an exemption certificate in good faith in the absence of evidence to the contrary. A vendor shall be deemed to have accepted an exemption certificate in good faith if the vendor.~~ (1) Main-

~~tains a completed exemption certificate, (2) has ascertained the identity of the person or entity who presented the exemption certificate, and (3) has not been shown by a preponderance of the evidence to have had knowledge that the presentation of the certificate was improper if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption shall not be relieved from such liability. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.~~

(c) The exemption certificate shall be substantially in such form as the director may prescribe. *The seller shall use the standard form for claiming an exemption electronically as adopted by the director. A ~~vendor~~ seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.*

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by \$250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by a nonprofit entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, shall bear the name and address of the entity and indicate the subsection under which the exemption is being claimed. Such certificate shall be signed by an officer, office manager or other administrator of the nonprofit entity, *if in paper form*, and contain the driver's license number of the signer. The certificate shall be substantially in such form as the director may prescribe. Payments made on an exempt entity's check, warrant, voucher or is charged to the entity's account shall relieve the ~~vendor~~ seller from collecting and remitting the tax if it is taken in good faith.

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

New Sec. 12. State sales tax rate changes must take effect on the first day of a calendar quarter. The secretary shall make a reasonable effort to provide sellers with as much advance notice as practicable of any rate changes, legislative change in the tax base and amendments to sales and use tax rules and regulations. Failure of a seller to receive such notice or failure of the secretary to provide such notice to a seller or limit the

effective date of a rate change shall not relieve the seller of its obligation to collect sales or use tax or otherwise comply with any such legislative, rule or regulatory changes.

New Sec. 13. On and after the databases are developed pursuant to subsections (a), (b) and (c) of section 14 and amendments thereto and after the state has joined and become a member of the agreement, sellers and certified service providers (CSPs) are relieved from liability for state and local sales and use tax for having charged and collected the incorrect amount of sales tax resulting from the seller or certified service provider relying on erroneous data provided by the secretary on tax rates, boundaries or taxing jurisdiction assignments. If the secretary provides an address-based system for assigning taxing jurisdictions that meets the requirements developed pursuant to the federal mobile telecommunications sourcing act, no liability relief is provided to sellers or certified service providers for errors resulting from reliance on the information provided under the provisions of subsection (c) of section 14 and amendments thereto.

New Sec. 14. (a) The secretary shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(b) The secretary shall provide and maintain a database of all sales and use tax rates for all taxing jurisdictions. For the identification of counties and cities, codes corresponding to the rates must be provided according to federal information processing standards (FIPS) as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the secretary.

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

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

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

New Sec. 15. (a) The retail sale of a product shall be sourced in accordance with section 16 and amendments thereto. The provisions of section 16 and amendments thereto apply regardless of the characterization of a product as tangible personal property, a digital good or a service. The provisions of section 16 and amendments thereto only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(b) Section 16 and amendments thereto does not apply to sales or use taxes levied on the following: (1) The retail sale or transfer of water craft, modular homes, manufactured homes or mobile homes. The retail

sale of these items shall be sourced according to K.S.A. 12-191 and amendments thereto;

(2) the retail sales, excluding lease or rental, of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of section 16 and amendments thereto. The retail sale of these items shall be sourced according to K.S.A. 12-191 and amendments thereto and the lease or rental of these items must be sourced according to subsection (c) of section 16 and amendments thereto; and

(3) telecommunications services, as set out in section 19 and amendments thereto, shall be sourced in accordance with section 19 and amendments thereto.

New Sec. 16. (a) The retail sale, excluding lease or rental, of a product shall be sourced as follows: (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

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

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

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

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

(b) The lease or rental of tangible personal property, other than property identified in subsection (c) or (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls;

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

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

(c) The lease or rental of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced

to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations;

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

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

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

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

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

(3) aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

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

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

(1) Taking possession of tangible personal property;

(2) making first use of services; or

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

New Sec. 17. (a) Notwithstanding the provisions of section 16 and amendments thereto, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically or a service that the digital good, computer software delivered electronically or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a multiple points of use or MPU exemption form disclosing this fact.

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

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

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

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

New Sec. 18. (a) (1) Notwithstanding the provisions of section 16 and amendments thereto, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

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

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

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to subsection (a)(5) of section 16 and amendments thereto. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

New Sec. 19. (a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

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

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

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

(3) a sale of prepaid calling service is sourced in accordance with section 16 and amendments thereto, except that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in subsection (a)(5) of section 16 and amendments thereto shall include as an option the location associate with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows: (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

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

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

(4) service for segments of a channel located in more than one juris-

diction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

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

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

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

(4) “customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area;

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

(6) “end user” means the person who utilizes the telecommunication service. In the case of an entity, end user means the individual who utilizes the services on behalf of the entity;

(7) “home service provider” means the same as that term in defined in section 124(5) of Public Law 106-252 (mobile telecommunications sourcing act);

(8) “mobile telecommunications service” means the same as that term is defined in section 124(5) of Public Law 106-252 (mobile telecommunications sourcing act);

(9) “place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider;

(10) “post-paid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) “prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(12) “private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of such channel or channels; and

(13) “service address” means: (A) The location of the telecommunications equipment to which a customer’s call is charged and from which

the call originates or terminates, regardless of where the call is billed or paid;

(B) if the location in subsection (13)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

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

New Sec. 20. (a) A seller is allowed a deduction from taxable sales for bad debts attributable to taxable sales of such seller that have become uncollectable. Any deduction taken that is attributed to bad debts shall not include interest.

(b) The amount of the bad debt deduction shall be calculated pursuant to 26 U.S.C. § 166(b), except that such amount shall be adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid and expenses incurred in attempting to collect any debt and repossessed property.

(c) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectable in the seller's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a seller who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the seller's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the seller was required to file a federal income tax return.

(d) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(e) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed by the seller within the applicable statute of limitations for refund claim pursuant to subsection (b) of K.S.A. 79-3609 and amendments thereto; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(f) Where filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(g) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account must first be applied proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges and any other charges.

(h) In situations where the books and records of the seller, or certified service provider on behalf of the seller, claiming the bad debt allowance support an allocation of the bad debts among the member states, such an allocation is permitted.

New Sec. 21. (a) The purpose of this section is to set forth this state's policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model 1 sellers.

(b) As used in this section: (1) "Confidential taxpayer information" means all information that is protected under this state's laws, rules and regulations and privileges;

(2) "personally identifiable information" means information that identifies a person; and

(3) “anonymous data” means information that does not identify a person.

(c) A fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider (CSP) shall perform its tax calculation, remittance and reporting functions without retaining the personally identifiable information of consumers.

(d) The secretary shall provide public notification to consumers, including their exempt purchasers, of the department’s practices relating to the collection, use and retention of personally identifiable information.

(e) When any personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation that are claimed by reason of a consumer’s status or the intended use of the goods or services purchased, such information shall no longer be retained by the department.

(f) When personally identifiable information regarding an individual is retained by or on behalf of the department, the secretary shall provide reasonable access by such individual to such individual’s own information in the department’s possession and a right to correct any inaccurately recorded information.

(g) If anyone other than this state, or a person authorized by this state’s law or the agreement, seeks to discover personally identifiable information, the secretary shall make a reasonable and timely effort to notify the individual of such request.

(h) This privacy policy is subject to enforcement by the attorney general.

New Sec. 22. (a) When the seller is computing the amount of tax owed by the purchaser and remitted to the state: (1) Tax computation must be carried to the third decimal place; and

(2) the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. The rounding rule may be applied to the aggregated state and local taxes.

New Sec. 23. (a) The secretary shall complete a taxability matrix. This state’s entries in the matrix shall be provided and maintained by the secretary in a database that is in a downloadable format.

(b) The secretary shall provide reasonable notice of changes in the taxability of the products or services listed in the taxability matrix.

(c) Sellers and certified service providers are relieved from liability to this state or any local taxing jurisdiction for having charged and collected the incorrect amount of state or local sales or use tax resulting from the seller or certified service providers relying on erroneous data provided by the secretary in the taxability matrix.

New Sec. 24. The effective date of state or local sales or use tax rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows: (a) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(b) for a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

New Sec. 25. (a) The secretary shall participate in an online registration system that will allow sellers to register in this state and other member states.

(b) By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into this state as well as the other member states, including member states joining after the seller’s registration. Withdrawal or revocation of this state from the agreement shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of this state.

(c) If the seller has a requirement to register prior to registering under the agreement, the seller must register pursuant to K.S.A. 79-3608 and amendments thereto.

(d) Registration with the central registration system and the collection of sales and use taxes in this state shall not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

New Sec. 26. (a) Subject to the limitations in this section: (1) Amnesty is granted for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the agreement, provided that the seller was not so registered in this state in the twelve-month period preceding the effective date of this state's participation in the agreement;

(2) the amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in this state, provided registration occurs within 12 months of the effective date of this state's participation in the agreement; and

(3) amnesty similarly shall be provided if this state joins the agreement after the seller has registered.

(b) The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

(c) The amnesty is not available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(d) The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this thirty-six month period is tolled.

(e) The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

(f) This provision shall become effective as of the date that this state joins and becomes a member state of the agreement.

New Sec. 27. When registering under the agreement, the seller may select one of the following methods of remittances or other method allowed by K.S.A. 79-3607 and amendments thereto to remit the taxes collected: (a) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(b) model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; or

(c) model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system.

New Sec. 28. (a) The provisions of sections 12 through 28 and amendments thereto shall be known and may be cited as the streamlined sales and use tax agreement conformity act.

(b) The provisions of sections 12 through 28 shall be effective on and after July 1, 2003.

Sec. 29. On and after July 1, 2003, K.S.A. 12-189a is hereby amended to read as follows: 12-189a. The following sales shall be subject to the taxes levied and collected by all cities and counties under the provisions of K.S.A. 12-187 *et seq.* and amendments thereto:

(a) All sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agri-

cultural use, *except that effective January 1, 2006, the provisions of this subsection shall expire for sales of water pursuant to this subsection;*

(b) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises; *and*

(c) all sales of intrastate telephone and telegraph services for non-commercial use.

Sec. 30. On and after July 1, 2003, K.S.A. 2002 Supp. 79-32,206 is hereby amended to read as follows: 79-32,206. For all taxable years commencing after December 31, 2001, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, the premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, an amount equal to 15% of the property tax levied for property tax years 2002, 2003 and 2004, 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007, and all such years thereafter, actually and timely paid during an income or privilege taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) or (6) of class 2, machinery and equipment classified for such purposes in subclass (2) of class 2. For all taxable years commencing after December 31, 2004, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007 and all such years thereafter, actually and timely paid during an income taxable year upon *railroad* machinery and equipment classified for property tax purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (3) of class 2. Prior to the 2004 legislative session, the joint committee on economic development shall conduct a study of the economic impact of the foregoing provision. If the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company.

Sec. 31. On and after July 1, 2003, K.S.A. 12-188 is hereby amended to read as follows: 12-188. The following classes of cities are hereby established for the purpose of imposing limitations and prohibitions upon the levying of sales and excise taxes or taxes in the nature of an excise upon sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services by cities as authorized and provided by article 12, section 5, of the constitution of the state of Kansas:

Class A cities. All cities in the state of Kansas which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services by cities.

Class B cities. All cities in the state of Kansas which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services for the purpose of financing the provision of health care services.

Class C cities. All cities in the state of Kansas having a population of more than 290,000 located in a county having a population of more than 350,000 which has the authority to levy and collect excise taxes or taxes

in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services.

Class D cities. All cities in the state of Kansas located in Cowley, Ellis, Ellsworth, Finney, Harper, Johnson, Labette, Lyon, Montgomery, Osage, Reno ~~or~~, Woodson or Wyandotte county or in both Riley and Pottawatomie counties which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services.

Sec. 32. On and after July 1, 2003, K.S.A. 2002 Supp. 12-187 is hereby amended to read as follows: 12-187. (a) (1) No city shall impose a retailers' sales tax under the provisions of this act without the governing body of such city having first submitted such proposition to and having received the approval of a majority of the electors of the city voting thereon at an election called and held therefor. The governing body of any city may submit the question of imposing a retailers' sales tax and the governing body shall be required to submit the question upon submission of a petition signed by electors of such city equal in number to not less than 10% of the electors of such city.

(2) The governing body of any class B city located in any county which does not impose a countywide retailers' sales tax pursuant to paragraph (5) of subsection (b) may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city, county or district hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home health care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(b) (1) The board of county commissioners of any county may submit the question of imposing a countywide retailers' sales tax to the electors at an election called and held thereon, and any such board shall be required to submit the question upon submission of a petition signed by electors of such county equal in number to not less than 10% of the electors of such county who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than $\frac{2}{3}$ of the membership of the governing body of each of one or more cities within such county which contains a population of not less than 25% of the entire population of the county, or upon receiving resolutions requesting such an election passed by $\frac{2}{3}$ of the membership of the governing body of each of one or more taxing subdivisions within such county which levy not less than 25% of the property taxes levied by all taxing subdivisions within the county.

(2) The board of county commissioners of Anderson, Atchison, Barton, Butler, Chase, Cowley, Cherokee, Crawford, Ford, Jefferson, Lyon, Montgomery, Neosho, Osage, Ottawa, Riley, Saline, Seward, Sumner, Wabaunsee, Wilson and Wyandotte counties may submit the question of imposing a countywide retailers' sales tax and pledging the revenue received therefrom for the purpose of financing the construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the secretary of revenue. Nothing in this paragraph shall be construed to allow

the rate of tax imposed by Butler, *Chase*, Cowley, Lyon, Montgomery, Neosho, Riley, *Sumner* or Wilson county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189, and amendments thereto.

(3) (A) Except as otherwise provided in this paragraph, the result of the election held on November 8, 1988, on the question submitted by the board of county commissioners of Jackson county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the Banner Creek reservoir project. The tax imposed pursuant to this paragraph shall take effect on the effective date of this act and shall expire not later than five years after such date.

(B) The result of the election held on November 8, 1994, on the question submitted by the board of county commissioners of Ottawa county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the erection, construction and furnishing of a law enforcement center and jail facility.

(4) The board of county commissioners of Finney and Ford counties may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing all or any portion of the cost to be paid by Finney or Ford county for construction of highway projects identified as system enhancements under the provisions of paragraph (5) of subsection (b) of K.S.A. 68-2314, and amendments thereto, to the electors at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Finney or Ford county pursuant to this paragraph to exceed the maximum rate prescribed in K.S.A. 12-189, and amendments thereto. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Finney county, the state treasurer shall remit such funds to the treasurer of Finney county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Ford county, the state treasurer shall remit such funds to the treasurer of Ford county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund.

(5) The board of county commissioners of any county may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to paragraph (2) of subsection (a) by any city located in such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the countywide tax revenue collected by retailers within such city as certified by the director of taxation. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city or county hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical

services, rural health clinics, integration of health care services, home health services and rural health networks.

(6) The board of county commissioners of Allen county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of operation and construction of a solid waste disposal area or the modification of an existing landfill to comply with federal regulations to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs incurred in the financing of the project undertaken. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Allen county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189 and amendments thereto.

(7) The board of county commissioners of Clay, Dickinson and Miami county may submit the question of imposing a countywide retailers' sales tax at the rate of .50% in the case of Clay and Dickinson county and at a rate of up to 1% in the case of Miami county, and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(8) The board of county commissioners of Sherman county may submit the question of imposing a countywide retailers' sales tax at the rate of .25%, .5% or .75% and pledging the revenue therefrom for the purpose of financing the costs of the county roads 64 and 65 construction and improvement project. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(9) The board of county commissioners of Cowley, Russell and Woodson county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% in the case of Russell and Woodson county and at a rate of up to .25%, in the case of Cowley county and pledging the revenue received therefrom for the purpose of financing economic development initiatives or public infrastructure projects. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(10) The board of county commissioners of Franklin county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing recreational facilities. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(11) The board of county commissioners of Douglas county may submit to the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purposes of preservation, access and management of open space, and for industrial and business park related economic development.

(12) The board of county commissioners of Shawnee county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom to the city of Topeka for the purpose of financing the costs of rebuilding the Topeka boulevard bridge and other public infrastructure improvements associated with such project to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such project.

(13) The board of county commissioners of Jackson county may submit the question of imposing a countywide retailers' sales tax at a rate of .4% and pledging the revenue received therefrom as follows: 50% of such revenues for the purpose of financing for economic development initiatives; and 50% of such revenues for the purpose of financing public infrastructure projects to the electors at an election called and held thereon.

The tax imposed pursuant to this paragraph shall expire after seven years from the date such tax is first collected.

(c) The boards of county commissioners of any two or more contiguous counties, upon adoption of a joint resolution by such boards, may submit the question of imposing a retailers' sales tax within such counties to the electors of such counties at an election called and held thereon and such boards of any two or more contiguous counties shall be required to submit such question upon submission of a petition in each of such counties, signed by a number of electors of each of such counties where submitted equal in number to not less than 10% of the electors of each of such counties who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than $\frac{2}{3}$ of the membership of the governing body of each of one or more cities within each of such counties which contains a population of not less than 25% of the entire population of each of such counties, or upon receiving resolutions requesting such an election passed by $\frac{2}{3}$ of the membership of the governing body of each of one or more taxing subdivisions within each of such counties which levy not less than 25% of the property taxes levied by all taxing subdivisions within each of such counties.

(d) Any city retailers' sales tax in the amount of .5% being levied by a city on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing. In addition to any city retailers' sales tax being levied by a city on July 1, 1990, any such city may adopt an additional city retailers' sales tax in the amount of .25% or .5%, provided that such additional tax is adopted and approved in the manner provided for the adoption and approval of a city retailers' sales tax. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.

(e) A class D city shall have the same power to levy and collect a city retailers' sales tax that a class A city is authorized to levy and collect and in addition, the governing body of any class D city may submit the question of imposing an additional city retailers' sales tax in the amount of .125%, .25%, .5% or .75% and pledging the revenue received therefrom for economic development initiatives, strategic planning initiatives or for public infrastructure projects including buildings to the electors at an election called and held thereon. Any additional sales tax imposed pursuant to this paragraph shall expire no later than five years from the date of imposition thereof, except that any such tax imposed by any class D city after the effective date of this act shall expire no later than 10 years from the date of imposition thereof.

(f) Any city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the proposition. If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed by K.S.A. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax except that the repeal of any such city retailers' sales tax may be accomplished by the adoption of an ordinance so providing.

(g) The sufficiency of the number of signers of any petition filed under this section shall be determined by the county election officer.

Every election held under this act shall be conducted by the county election officer.

(h) The governing body of the city or county proposing to levy any retailers' sales tax shall specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition.

Sec. 33. On and after July 1, 2003, K.S.A. 2002 Supp. 12-189 is hereby amended to read as follows: 12-189. Except as otherwise provided by paragraph (2) of subsection (a) of K.S.A. 12-187, and amendments thereto, the rate of any class A, class B or class C city retailers' sales tax shall be fixed in the amount of .25%, .5%, .75% or 1% which amount shall be determined by the governing body of the city. Except as otherwise provided by paragraph (2) of subsection (a) of K.S.A. 12-187, and amendments thereto, the rate of any class D city retailers' sales tax shall be fixed in the amount of .10%, .25%, .5%, .75%, 1%, 1.125%, 1.25%, 1.5% or 1.75%. The rate of any countywide retailers' sales tax shall be fixed in an amount of either .25%, .5%, .75% or 1% which amount shall be determined by the board of county commissioners, except that:

(a) The board of county commissioners of Wabaunsee county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%; the board of county commissioners of Osage county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25% or 1.5%; the board of county commissioners of Cherokee, Crawford, Ford, Saline, Seward or Wyandotte county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, the board of county commissioners of Atchison county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5% or 1.75% and the board of county commissioners of Anderson, Barton, Jefferson or Ottawa county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(b) the board of county commissioners of Jackson county, for the purposes of paragraph (3) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(c) the boards of county commissioners of Finney and Ford counties, for the purposes of paragraph (4) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at .25%;

(d) the board of county commissioners of any county for the purposes of paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by a board of county commissioners on the effective date of this act plus .25%, .5%, .75% or 1%, as the case requires;

(e) the board of county commissioners of Dickinson county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, and the board of county commissioners of Miami county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%, 1.5%, 1.75% or 2%;

(f) the board of county commissioners of Sherman county, for the purposes of paragraph (8) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, 1.75% or 2%;

(g) the board of county commissioners of Russell county for the purposes of paragraph (9) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

(h) the board of county commissioners of Franklin county, for the purposes of paragraph (10) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%; ~~or~~

(i) the board of county commissioners of Douglas county, for the purposes of paragraph (11) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%; *or*

(j) *the board of county commissioners of Jackson county, for the purposes of subsection (b)(13) of K.S.A. 12-187 and amendments thereto, may fix such rate at 1.4%.*

Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in K.S.A. 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect such local sales taxes and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement thereof.

Upon receipt of a certified copy of an ordinance or resolution authorizing the levy of a local retailers' sales tax, the director of taxation shall cause such taxes to be collected within or without the boundaries of such taxing subdivision at the same time and in the same manner provided for the collection of the state retailers' sales tax. Such copy shall be submitted to the director of taxation within 30 days after adoption of any such ordinance or resolution. All moneys collected by the director of taxation under the provisions of this section shall be credited to a county and city retailers' sales tax fund which fund is hereby established in the state treasury. Any refund due on any county or city retailers' sales tax collected pursuant to this act shall be paid out of the sales tax refund fund and reimbursed by the director of taxation from collections of local retailers' sales tax revenue. Except for local retailers' sales tax revenue required to be deposited in the redevelopment bond fund established under K.S.A. 74-8927, and amendments thereto, all local retailers' sales tax revenue collected within any county or city pursuant to this act shall be apportioned and remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of such county or city.

Revenue that is received from the imposition of a local retailers' sales tax which exceeds the amount of revenue required to pay the costs of a special project for which such revenue was pledged shall be credited to the city or county general fund, as the case requires.

The director of taxation shall provide, upon request by a city or county clerk or treasurer of any city or county levying a local retailers' sales tax, monthly reports identifying each retailer having a place of business in such city or county setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month and identifying each business location maintained by the retailer within such city or county. Such report shall be made available to the clerk or treasurer of such city or county within a reasonable time after it has been requested from the director of taxation. The director of taxation shall be allowed to assess a reasonable fee for the issuance of such report. Information received by any city or county pursuant to this section shall be confidential, and it shall be unlawful for any officer or employee of such city or county to divulge any such information in any manner. Any violation of this paragraph by a city or county officer or employee is a class B misdemeanor, and such officer or employee shall be dismissed from office.

Sec. 34. On and after July 1, 2003, K.S.A. 72-6431 is hereby amended to read as follows: 72-6431. (a) The board of each district shall levy an ad valorem tax upon the taxable tangible property of the district in the school years specified in subsection (b) for the purpose of:

- (1) Financing that portion of the district's general fund budget which is not financed from any other source provided by law;
- (2) paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and

(3) with respect to any redevelopment district established prior to July 1, 1997, pursuant to K.S.A. 12-1771, and amendments thereto, paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.

(b) The tax required under subsection (a) shall be levied at a rate of 20 mills in the ~~2001-02 school year and in the 2002-03 school year~~ 2003-04 and 2004-05 school years.

(c) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district, shall be deposited in the general fund of the district.

(d) On June 1 of each year, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state board, shall be remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(e) No district shall proceed under K.S.A. 79-1964, 79-1964a or 79-1964b, and amendments thereto.

Sec. 35. K.S.A. 74-2433 is hereby amended to read as follows: 74-2433. (a) There is hereby created a state board of tax appeals, referred to in this act as the board. The board shall be composed of ~~five~~ *three* members who shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. After ~~January 15, 1999, three~~ *the effective date of this act, one* of such members shall: ~~(1) have been regularly admitted to practice law in the state of Kansas; and (2) for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any other court in this state; or, and one of such members shall have engaged in active practice as a certified public accountant who has maintained registration as an active attorney with the Kansas supreme court, or any combination thereof for a period of at least five years. No successor shall be appointed for the two members of the board whose terms of office expired on January 15, 2003, and if any such appointment is made prior to the effective date of this act, any such member's term of office shall expire on the effective date of this act.~~ Except as provided by K.S.A. 46-2601, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. Not more than ~~three~~ *two* members of the board shall be of the same political party. Members of the board shall be residents of the state. Subject to the provisions of K.S.A. 75-4315c, and amendments thereto, *no more than one shall be appointed from each any one of the congressional districts of Kansas and the remainder from the state at large.* The members of the board shall be selected with special reference to training and experience for duties imposed by this act and shall be individuals with legal, accounting or appraisal training and experience. Members shall be subject to the supreme court rules of judicial conduct applicable to all judges of the district court. The board shall be bound by the doctrine of *stare decisis* limited to published decisions of an appellate court other than a district court. Members shall hold office for terms of four years and until their successors are appointed and confirmed. *Except as otherwise provided,* such terms of office shall expire on January 15 of the last year of such term. If a vacancy occurs on the board, the governor shall appoint a successor to fill the vacancy for the unexpired term. The governor shall select one of its members to serve as chairperson. The votes of ~~three~~ *two* members shall be required for any action to be taken by the board. Meetings may be called by the chairperson and shall be called on request of a majority of the members of the board and when otherwise prescribed by statute.

(b) Any member of the state board of tax appeals may be removed by the governor for cause, after public hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) The state board of tax appeals shall appoint, subject to approval by the governor, an executive director of the board, to serve at the pleasure of the board. The executive director shall: (1) Be in the unclassified service under the Kansas civil service act; (2) devote full time to the executive director's assigned duties; (3) receive such compensation as determined by the board, subject to the limitations of appropriations thereof; and (4) have familiarity with the tax appeals process sufficient to fulfill the duties of the office of executive director. The executive director shall perform such duties as directed by the board.

(d) Appeals decided by the state board of tax appeals which are deemed of sufficient importance to be published shall be published by the board.

(e) After appointment, members of the state board of tax appeals shall complete the following course requirements: (1) A tested appraisal course of not less than 30 clock hours of instruction consisting of the fundamentals of real property appraisal with an emphasis on the cost and sales approaches to value; (2) a tested appraisal course of not less than 30 clock hours of instruction consisting of the fundamentals of real property appraisal with an emphasis on the income approach to value; (3) a tested appraisal course of not less than 30 clock hours of instruction with an emphasis on mass appraisal; (4) an appraisal course with an emphasis on Kansas property tax laws and; (5) an appraisal course on the techniques and procedures for the valuation of state assessed properties with an emphasis on unit valuation; and (6) a tested appraisal course on the techniques and procedures for the valuation of land devoted to agricultural use pursuant to K.S.A. 79-1476, and amendments thereto. The executive director shall adopt rules and regulations prescribing a timetable for the completion of the course requirements and prescribing continued education requirements for members of the board.

(f) The state board of tax appeals shall have no capacity or power to sue or be sued.

Sec. 36. On and after July 1, 2003, K.S.A. 2002 Supp. 79-201x is hereby amended to read as follows: 79-201x. For taxable years ~~2001 and 2002~~ 2003 and 2004, the following described property, to the extent herein specified, shall be and is hereby exempt from the property tax levied pursuant to the provisions of K.S.A. 72-6431, and amendments thereto: Property used for residential purposes to the extent of \$20,000 of its appraised valuation.

Sec. 37. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3295 is hereby amended to read as follows: 79-3295. (a) The term "employee" means a resident of this state as defined by subsection (b) of K.S.A. 79-32,109, and amendments thereto, performing services for an employer either within or without the state and a nonresident performing services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation.

(b) The term "employer" means any person, firm, partnership, limited liability company, corporation, association, trust or fiduciary of any kind or other type organization qualifying as an employer for federal income tax withholding purposes and who maintains an office, transacts business in or derives any income from sources within the state of Kansas for whom an individual performs or performed any services, of whatever nature, as the employee of such employer, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person having control of the payment of wages. It also includes the United States, the state and all political subdivisions thereof, and all agencies or instrumentalities of any of them.

(c) The term "distributee" means any person or organization who

receives a distribution which is subject to withholding of income tax pursuant to this act.

(d) The term “distribution” means a distribution from a corporation for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, from a limited liability company formed under the laws of the state of Kansas, or from a partnership.

(e) *The term “nonresident” means an individual domiciled outside of this state and an entity whose commercial domicile is outside of this state. For corporations, commercial domicile is as defined in K.S.A. 79-3271 and amendments thereto.*

(f) The term “payee” means any person or organization who receives a payment other than wages, *or a payment of a pension, annuity or deferred income*, which is subject to withholding of income tax pursuant to this act.

(g) *The term “payer” means any person or organization, other than an employer, who makes a payment other than wages, or a payment of a pension, annuity or deferred income, which is subject to withholding of income tax pursuant to this act.*

~~(h)~~ (h) The term “payment other than wages” means a payment that is ~~subject to federal income tax withholding and~~ taxable under the Kansas income tax act, and that is a payment:

- (1) For any supplemental unemployment compensation, annuity, or sick pay;
- (2) pursuant to a voluntary withholding agreement;
- (3) of gambling winnings;
- (4) of taxable payments of Indian casino profits;
- (5) for any vehicle fringe benefit; *or*
- ~~(6) of periodic payments of pensions, annuities, and other deferred income;~~
- ~~—(7) of nonperiodic distributions of pensions, annuities, and other deferred income; or~~
- ~~—(8) of eligible rollover distributions of pensions, annuities, and other deferred income of a management or consulting fee paid in the ordinary course of a trade, business or other for profit venture.~~

~~(g) The term “payor” means any person or organization, other than an employer, who makes payments, other than wages or distributions, which are subject to withholding of income tax pursuant to this act.~~

~~(h)~~ (i) *The term “pension, annuity or other deferred income” means a payment that is taxable under the Kansas income tax act, and that is a payment:*

- (1) *Of periodic payments of pensions, annuities and other deferred income;*
- (2) *of nonperiodic distributions of pensions, annuities and other deferred income; or*
- (3) *of eligible rollover distributions of pensions, annuities and other deferred income.*

(j) The term “wages” means wages as defined by section 3401(a) of the federal internal revenue code which are taxable under the Kansas income tax act, ~~and shall include any prize or award paid to a professional athlete at a sporting event held in this state.~~

Sec. 38. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3298 is hereby amended to read as follows: 79-3298. (a) Every employer ~~and payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes and file returns in accordance with the following provisions:

- (1) Whenever the total amount withheld exceeds \$100,000 in any calendar year, the employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld in accordance with the following schedule: Each calendar month shall be divided into four remittance periods that end on the 7th, 15th, 21st and the last day of such month. If at the end of any one or all of such remittance periods the total undeposited taxes equal or exceed \$667, the taxes shall be re-

mitted within three banking days. Saturdays, Sundays and legal holidays shall not be treated as banking days.

(2) Whenever the total amount withheld exceeds \$8,000 but does not exceed \$100,000 in any calendar year, the employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld for wages paid during the first 15 days of any month on or before the 25th day of the month. The employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld for wages paid during the remainder of that month on or before the 10th day of the following month.

(3) Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld during any month on or before the 15th day of the following month.

(4) Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld in any calendar quarter on or before the 25th day of the first month following the end of that calendar quarter.

(5) Whenever the total amount withheld does not exceed \$200 in any calendar year, the employer ~~or payor, payer, person or organization deducting and withholding tax~~ shall remit the taxes withheld during that year on or before January 25 of the following year.

(b) Each remittance required under the provisions of subsection (a) shall be accompanied by a Kansas withholding tax remittance form prescribed and furnished by the director.

(c) Every employer ~~or payor, payer, person or organization deducting and withholding tax~~ and making remittances pursuant to subsection (a) shall file a return on a form prescribed and furnished by the director for each calendar year on or before the last day of February of the following year.

(d) The excess of any remittance over the actual taxes withheld in any withholding period shall be credited against the liability for following withholding periods until exhausted. A refund shall be allowed in accordance with K.S.A. 79-32,105, and amendments thereto, where an overpayment cannot be adjusted by an offset against the liability for a subsequent withholding period.

(e) *For purposes of determining filing requirements*, determinations of amounts withheld during a calendar year by employers ~~or payors for purposes of determining filing requirements, payers, persons or organizations deducting and withholding tax~~ shall be made by the director upon the basis of amounts withheld by those employers ~~or payors, payers, persons or organizations~~ during the preceding calendar year or by estimates in cases of employers ~~or payors, payers, persons or organizations~~ having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer ~~or payor, payer, person or organization deducting and withholding tax~~ when it is apparent that the original determination was inaccurate.

(f) Whenever the director has cause to believe that money withheld by an employer ~~or payor, payer, person or organization deducting and withholding tax~~ pursuant to this act may be converted, diverted, lost, or otherwise not timely paid in accordance with this section, the director shall have the power to require returns and payment from any such employer ~~or payor, payer, person or organization~~ at any time at more frequent intervals than prescribed by this section in order to secure full payment to the state of all amounts withheld by such employer ~~or payor, payer, person or organization~~ in accordance with this act.

Sec. 39. On and after July 1, 2003, K.S.A. 2002 Supp. 79-3299 is hereby amended to read as follows: 79-3299. (a) Every employer ~~or payor shall, payer, person or organization deducting and withholding tax~~, on or before January 31 of each year, *shall* prepare a statement for each employee or payee on a form prescribed by the director stating the amount

of wages or payments other than wages subject to Kansas income tax paid during the preceding year, the total amount of tax withheld, if any, from such wages or payments other than wages by the employer ~~or payor,~~ *payer, person or organization* pursuant to this act and such other information as may be prescribed by the director. One copy of such statement shall be filed by the employer ~~or payor,~~ *payer, person or organization* with the division of taxation on or before the last day of February of each year. Two copies of such statement shall be given to the employee or payee concerned, one of which will be filed by the employee or payee with the tax return required by this chapter.

(b) In the case of an employee whose employment is terminated before the end of a calendar year, the statement required by subsection (a) may be mailed at the time provided in that subsection to the last known address of the employee, or issued at the time of the last payment to the employee, at the employer's option.

(c) Any employer ~~or payor,~~ *payer, person or organization deducting and withholding tax* who ~~willfully~~ *intentionally* fails to furnish a statement to an employee or payee as required under the provisions of subsections (a) and (b) ~~of this section~~ shall be guilty of a *nonperson* misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100 for each such offense.

(d) The annual statement of wages and salaries paid and amount withheld required by this section shall be in lieu of the annual information return required under K.S.A. 79-3222 *and amendments thereto*.

Sec. 40. On and after July 1, 2003, K.S.A. 2002 Supp. 79-32,100 is hereby amended to read as follows: 79-32,100. (a) The tax deducted and withheld under this act shall not be allowed as a deduction ~~either~~ to the employer ~~or payor,~~ *payer, person or organization deducting and withholding tax* or to the employee or payee in computing taxable income under the "Kansas income tax act."

(b) The full amount of wages and salaries or payments other than wages from which an amount was withheld in accordance with this act shall be included in the gross income of the employee or payee unless such wages and salaries or payments other than wages or a portion thereof are otherwise excludable under the provisions of the "Kansas income tax act."

(c) The amount deducted and withheld under this act during any calendar year from the wages or payments other than wages of an individual taxpayer shall be allowed as a credit against the income tax otherwise imposed on such taxpayer by the "Kansas income tax act," whether or not such amount was remitted to the division of taxation by the employer ~~or payor,~~ *payer, person or organization deducting and withholding tax* in accordance with the terms of this act.

(d) If the amount withheld under this act during any calendar year exceeds the individual income tax liability of the employee-payee-taxpayer any excess shall be applied to any other income tax owed the state of Kansas by such individual ~~(including fines, penalties and interest, if any),~~ and the balance of such excess, if any, refunded to the taxpayer as provided in subsection (c) of K.S.A. 79-32,105, and amendments thereto.

Sec. 41. On and after July 1, 2003, K.S.A. 2002 Supp. 79-32,100a is hereby amended to read as follows: 79-32,100a. (a) Every ~~payor~~ *payer* who is required under federal law to withhold upon payments other than wages ~~pursuant to the federal internal revenue code as defined by K.S.A. 79-3295 and amendments thereto,~~ shall ~~withhold and~~ *deduct and withhold* an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, ~~whenever the payee is a person whose primary residence is in Kansas.~~

(b) A determination by the internal revenue service that relieves a ~~payor~~ *payer* from withholding responsibility with respect to payments other than wages to a payee shall also apply for Kansas income tax withholding purposes. Whenever a ~~payor~~ *payer* is required to reinstate with-

holding for federal income tax with regard to any payee, such obligation shall be equally applicable for Kansas withholding purposes.

~~(c) Every payor who makes a distribution as defined by subsection (d) of K.S.A. 79-3295, and amendments thereto, shall withhold and deduct an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, from amounts distributed or distributable to each nonresident shareholder or partner. Every payer who is required under federal law to withhold upon payments of a pension, annuity or other deferred income, as defined by K.S.A. 79-3295 and amendments thereto, shall deduct and withhold an amount to be determined in accordance with K.S.A. 79-32,100d and amendments thereto, whenever the payee is a resident of the state of Kansas.~~

(d) Every payer who makes a payment of a management fee or a consulting fee to a nonresident shall deduct and withhold an amount to be determined in accordance with K.S.A. 2002 Supp. 79-32,100d and amendments thereto.

New Sec. 42. (a) Corporations for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect are required to deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110 and amendments thereto, from a nonresident shareholder's share of Kansas taxable income of the corporation, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the corporation shall make a return and pay over the withheld funds on or before the due date of the S corporation's income tax return, including extensions. Taxes withheld in the name of the nonresident shareholder must be used as credit against taxes due at the time the nonresident files a return of income or other applicable information return for the taxable year.

(b) An S corporation required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The S corporation shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299 and amendments thereto as proof of the amount of the nonresident shareholder's share of distributed or undistributed income and of the amount that has been withheld.

(c) Partnerships are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110 and amendments thereto, from a nonresident partner's share of Kansas taxable income of the partnership, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the partnership shall make a return and pay over the withheld funds on or before the due date of the partnership's income tax return, including extensions. Taxes withheld in the name of the nonresident partner must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(d) A partnership required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The partnership shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299 and amendments thereto, as proof of the amount of the nonresident shareholder's share of distributed or undistributed income that has been withheld.

(e) Limited liability companies are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110 and amendments thereto, from a nonresident member's share of Kansas taxable income of the limited liability company, whether distributed or undistributed, and pay the withheld amount to the

department in the manner prescribed by the department. For a taxable year beginning after 2002, the limited liability company shall make a return and pay over the withheld funds on or before the due date of the limited liabilities income tax return, including extensions. Taxes withheld in the name of the nonresident member must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(f) A limited liability company required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The limited liability company shall furnish to each nonresident member a written statement as required by K.S.A. 79-3299 and amendments thereto, as proof of the amount of the nonresident member's share of distributed or undistributed income that has been withheld.

(g) If a nonresident shareholder, partner or member provides the S corporation, partnership or limited liability company with a statement that the shareholder or partner is an organization exempt from income taxes under section 501(a) of the federal internal revenue code, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The statement must contain the shareholder's, partner's or member's name, federal identification number, internal revenue code section exemption number, and a copy of the internal revenue service exemption letter.

(h) (1) For purposes of computing the penalty under K.S.A. 79-32,107 and amendments thereto, the amount withheld is deemed a payment of estimated tax, and an equal part of the amount is deemed paid on each estimated tax due date for the previous taxable year.

(2) If a nonresident shareholder, partner or member files an affidavit with the department in a form acceptable to the department by which such nonresident shareholder, partner or member agrees to be subject to the personal jurisdiction of the department in courts of this state for the purpose of determining and collecting any Kansas taxes, including estimated taxes, together with any related interest and penalties, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The department may revoke an exemption granted by this subsection at any time it determines that the nonresident shareholder, partner or member is not abiding by its terms.

(i) The department is authorized to require such returns and other information as it considers appropriate to administer the provisions of this section, and to issue rulings and promulgate regulations as necessary or appropriate to implement this section.

(j) The director of taxation may allow a nonresident individual shareholder, partner or member to not file a Kansas income tax return if the nonresident individual shareholder's, partner's or member's only source of Kansas income was such nonresident shareholder's, partner's or member's share of the S corporation's, partnership's or limited liability company's income which was derived from or attributable to sources within this state, and the S corporation, partnership or limited liability company has remitted the amount required by subsections (a), (c) or (e) on behalf of such nonresident shareholder, partner or member. The amount remitted shall be retained in satisfaction of the Kansas income tax liability of the nonresident individual shareholder, partner or member.

(k) The provisions of this section shall be part of and supplemental to the Kansas withholding and declaration of estimated tax act.

(l) The provisions of this section shall be effective on and after July 1, 2003.

Sec. 43. On and after July 1, 2003, K.S.A. 2002 Supp. 79-32,100b is hereby amended to read as follows: 79-32,100b. (a) Every employer ~~or~~ ~~payer~~, *payer, person or organization* required to deduct and withhold tax from wages of an employee ~~or~~, payments other than wages of a payee *or*

from a distribution, under this act shall be liable for the payment of such tax whether or not it is collected from the employee ~~or~~, payee or distributee by the employer ~~or payor~~, payer, person or organization. For purposes of assessment and collection, any amount required to be withheld and paid over to the department of revenue, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer.

(b) Any amount of tax withheld shall constitute a special fund in trust for the department of revenue.

(c) No employee ~~or~~, payee or distributee shall have any right of action against their employer ~~or payor~~, payer, person or organization deducting and withholding tax in respect to any moneys deducted and withheld from wages ~~or~~, payments other than wages or distributions and paid over to the department of revenue in compliance or in intended compliance with this act.

Sec. 44. On and after July 1, 2003, K.S.A. 2002 Supp. 79-32,100c is hereby amended to read as follows: 79-32,100c. (a) If an employer ~~or payor~~, payer, person or organization deducting and withholding tax fails to deduct and withhold the tax as required under this act, and thereafter, the income tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the employer ~~or payor~~, payer, person or organization. The payment of such tax does not, however, operate to relieve the employer, payer, person or organization from liability for penalties, interest or additions to the tax applicable with respect to such failure to deduct and withhold. The employer ~~or payor will~~, payer, person or organization shall not be relieved under this provision from liability for payment of the tax required to be withheld unless it can be shown that the income tax against which the tax required to be withheld under this act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer who willfully fails to collect the tax imposed by the Kansas withholding tax act or truthfully account for any pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law.

Sec. 45. K.S.A. 2002 Supp. 79-15,101 is hereby amended to read as follows: 79-15,101. As used in this act unless the context otherwise requires:

(a) Any term used in this act shall have the same meaning as when used in a comparable context in the internal revenue code. Any reference in this act to “federal law” or the “internal revenue code” shall mean the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 1997. Any reference in this act to a specific provision of the internal revenue code shall be to such provision as it exists on December 31, 1997. *However, for estates of decedents dying on or after January 1, 2007, any determination made under K.S.A. 79-15,102 and amendments thereto regarding whether the estate is required by federal law to file a return for federal estate taxes shall be made by referring to the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 2001.*

(b) “Decedent” includes the testator, intestate, grantor, bargainer, vender or donor.

~~(b)~~ (c) “Deemed executor” includes any person in actual or constructive possession of any property of the decedent.

~~(c)~~ (d) “Director” means the director of taxation.

(e) “Distributee” means a beneficiary, legatee, devisee, heir, next of kin, grantee, donee, vendee, joint tenant or successor.

~~(d)~~ (f) “Domicile” refers to that place where a person resides, has an intention to remain and to which they intend to return following any absence.

~~(e)~~ (g) “Estate” and “property” shall mean the real, personal and mixed property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor which shall pass or be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors and shall include all personal property within or without the state.

~~(d)~~ (h) “Executor” and “administrator” mean the duly appointed, qualified and acting executor or administrator of the decedent in this state.

~~(g)~~ (i) “Nonresident decedent” means a decedent who was not a resident decedent at the time of death.

~~(h)~~ (j) “Personal representative” means the executor, administrator or deemed executor of the decedent.

~~(i)~~ (k) “Resident decedent” means a decedent who was domiciled in this state at the time of death. *A person who spent in the aggregate more than six months of the calendar year immediately preceding such person’s death within this state shall be presumed to have been a resident for purposes of this act, in the absence of proof to the contrary.*

~~(j)~~ (l) “Secretary” means the secretary of revenue, or the secretary’s designee.

~~(k)~~ (m) “Tax” includes tax, penalty and interest, unless the context of a particular section otherwise requires.

(n) *“Tax situs” relates to location of property for the purpose of imposing tax. Real estate or tangible personal property reflected in the Kansas gross estate shall be considered to have a tax situs within Kansas if, at the time of the decedent’s death, the property was physically located within the state of Kansas. Oil and gas leases on lands in this state and all interests created thereby, or arising therefrom, shall be considered as tangible personal property having an actual situs in this state. Intangible property reflected in the Kansas gross estate, including moneys on deposit with financial institutions, shall be presumed to have a tax situs within Kansas if the decedent was a resident decedent at the time of death.*

~~(l)~~ (o) “Transfer” shall include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed.

Sec. 46. K.S.A. 2002 Supp. 79-15,102 is hereby amended to read as follows: 79-15,102. (a) A tax is hereby imposed on the estate of every resident decedent, and every nonresident decedent who died holding an interest in property with a Kansas tax situs, whose estate is required by federal law to file a return for federal estate taxes. *For estates of decedents dying on or after January 1, 2007, the determination of whether the estate is required by federal law to file a return for federal estate taxes shall be made by referring to the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 2001.* The amount of such tax shall be equal to the amount of the maximum credit allowable by section 2011 of the internal revenue code against the tax imposed on the transfer of the estate of the decedent by section 2001 of the internal revenue code.

~~(b) When the estate of a resident decedent consists of property within and without the state, or in the case of the estate of a nonresident decedent who died holding an interest in property with a Kansas tax situs, the tax imposed under subsection (a) shall be the percentage thereof that the gross estate for federal estate tax purposes less the value of all property included therein having a tax situs which is not within the jurisdiction of the state of Kansas, bears to the total gross estate for federal estate tax purposes shall consist of property with a tax situs in Kansas and property with a tax situs outside Kansas, the tax imposed by subsection (a) shall be~~

multiplied by the percentage determined by dividing the value of all property included in the gross estate which is within the jurisdiction of the state of Kansas by the value of all property included in the gross estate.

Sec. 47. K.S.A. 2002 Supp. 79-15,103 is hereby amended to read as follows: 79-15,103. (a) *Except as otherwise provided*, the personal representative of every estate subject to the tax imposed by K.S.A. 2002 Supp. 79-15,102 and amendments thereto who is required by federal law to file a return for federal estate taxes shall *make and* file in the office of the director a return on forms prepared and furnished by the secretary together with a copy of the federal estate tax return ~~on or before the date the federal estate tax return is required to be filed. The personal representative of any decedent whose estate is not taxable under the provisions of this act, may obtain a determination of the director that no tax liability exists on such estate by filing a return on forms prepared and furnished by the secretary stating that such estate is not taxable.~~

~~—(b) The taxes imposed under the provisions of this act shall be paid by the personal representative to the director at the expiration of nine months after the death of the decedent.~~

~~—(c) If the taxes contemplated by this act are not paid when due, interest at the rate prescribed by subsection (b) of K.S.A. 79-2968, and amendments thereto, shall be charged and collected commencing at the time the same become payable.~~

(b) In those estates in which no executor or administrator has been appointed, the deemed executor shall make and file such return. In the event there is more than one deemed executor, all deemed executors shall be jointly responsible for completing and filing one return reporting all of the assets of the estate except as hereinafter provided.

(c) If, after exercising due diligence, the personal representative making and filing such return is unable to make a complete return as to any part of the gross estate of the decedent, the personal representative shall make and file a return reporting all information as to the estate assets, including a description thereof and the name of any person holding a legal or beneficial interest in the assets, to the best of such personal representative's knowledge.

Sec. 48. K.S.A. 2002 Supp. 79-15,109 is hereby amended to read as follows: 79-15,109. (a) As soon as practicable after the return is filed and the taxes paid, the director shall issue a closing letter. Such closing letter shall be issued to the personal representative upon the director being satisfied that there has been a final determination of all taxes due and that all such taxes have been paid.

(b) The closing letter shall be applicable only to assets reported in the return filed with the director. To the extent the gross assets of the decedent were reported, the issuance of a closing letter shall be conclusive evidence that all taxes have been determined and paid and shall release any lien which attached to the decedent's property, or the property of any personal representative or distributee, unless notice of such lien has been filed under section 61, and amendments thereto.

New Sec. 49. Any tax liability for tax imposed pursuant to K.S.A. 2002 Supp. 79-15,127 which may have accrued prior to the effective date of this act is hereby abolished. Any such tax paid shall be refunded to the taxpayer pursuant to the procedure prescribed by this section. Each claim for a tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of tax paid. All refunds shall be paid from the inheritance or succession tax refund fund, which is hereby created, upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee.

New Sec. 50. Returns made in accordance with the provisions of this act shall be filed on or before the date the federal estate tax return is required to be filed.

New Sec. 51. (a) Upon a showing of good cause the director may grant a reasonable extension of time for filing a return.

(b) A request for an extension of time to file shall be made in the manner and form prescribed by the secretary. No such extension shall be for more than six months, except in the event of litigation directly involving the estate.

(c) Notwithstanding a grant of an extension of time to file, the taxes shall be due and payable at the same time and in the same manner as if no such extension had been granted.

New Sec. 52. All returns, statements or other documents required to be filed under any provision of this act shall be filed with the office of the director of taxation, or at such other place as the secretary may by rule or regulation prescribe.

New Sec. 53. (a) Any return, statement or other document required to be made under any provision of this act shall be signed in accordance with forms or regulations prescribed by the secretary.

(b) The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by the individual.

(c) Except as otherwise provided by the secretary, any return, declaration, statement or other document required to be made under any provision of this act shall contain or be verified by a written declaration that it is made under penalties of perjury.

New Sec. 54. If any person fails to make a return required by this act or by regulations prescribed thereunder, but consents to disclose all information necessary for the preparation thereof, the director may prepare such return. After such return is signed by the person, such return may be received by the director as the return of the person.

New Sec. 55. (a) The director is authorized to provide with respect to any amount required to be shown on a return, statement or any other document, that if the amount of such item is other than a whole-dollar amount either:

(1) The fractional part of a dollar shall be disregarded; or

(2) the fractional part of a dollar shall be disregarded unless it amounts to \$.50 or more, in which case the amount, to be determined without regard to the fractional part of a dollar, shall be increased by \$1.

(b) Any person making a return, statement or other document shall be allowed, under regulations prescribed by the secretary, to make such return, statement or other document without regard to subsection (a).

(c) The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

New Sec. 56. (a) The tax imposed under the provisions of this act shall be paid by the personal representative.

(b) The personal representative, or each personal representative if there is more than one, shall be personally liable for the tax to the extent of the property in the personal representative's actual or constructive possession which has a Kansas tax situs, less any amounts the personal representative is required to pay to third parties who have a legally enforceable claim to the property that has priority under state or federal law over the tax imposed by this act.

New Sec. 57. (a) The tax imposed under the provisions of this act shall be paid at the expiration of nine months after the death of the decedent.

(b) The person required to make the return, without assessment or notice and demand from the director, shall pay such tax to the office of the director of taxation, or at such other place as the secretary may by rule or regulation prescribe.

New Sec. 58. (a) If any personal representative fails to file a return

or pay the tax if one is due, at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 1% of the unpaid balance of the tax due for each month or fraction thereof during which such failure continues, not exceeding 24% in the aggregate, plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If after review of a return the director determines that the underpayment of tax was due to the failure of the personal representative to make a reasonable attempt to comply with the provisions of this act, a penalty shall be imposed in the amount of 25% of the unpaid balance of tax due.

(c) If any personal representative has failed to file a return or has filed an incorrect or insufficient return, and after notice from the director refuses or neglects within 20 days to file a proper return, the director shall determine the value of the taxable estate according to the best available information and assess the tax together with a penalty of 50% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment.

(d) Any personal representative who, with fraudulent intent, fails to pay any tax or to make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, shall be assessed a penalty equal to the amount of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment. Such person shall also be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or be imprisoned in the county jail not less than 30 days nor more than one year, or both such fine and imprisonment.

(e) Any personal representative who intentionally signs a fraudulent return shall be guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding five years.

(f) (1) Whenever the director determines that the failure of the personal representative to comply with the provisions of subsection (a), (b) or (c) was due to reasonable causes, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(2) No penalty shall be assessed hereunder with respect to any underpayment of estate tax liability reported on any amended return filed by any personal representative who at the time of filing pays such underpayment and where the return is not being examined at the time of filing.

(3) No penalty assessed hereunder shall be collected if the personal representative has had the tax abated on appeal, and any penalty collected upon such tax shall be refunded.

New Sec. 59. Whenever the director has reason to believe that a personal representative may be unwilling or unable to fulfill the filing requirements of K.S.A. 79-15,103, and amendments thereto, relating to the filing of a return, or of section 56, and amendments thereto, relating to the payment of the tax, or that a distributee receiving property liable for the payment of tax is about to depart from the state or to remove any property which is subject to tax, including proceeds from the sale or disposal of such property, or to conceal themselves or such property, or to transfer, commingle, disburse or otherwise manipulate such property in order to frustrate or preclude the calculation of tax due thereon or collection of tax due therefrom, or to do any other act tending to prejudice, jeopardize or render wholly or partially ineffective the determination or collection of tax unless proceedings are brought without delay, the director shall immediately make an assessment for all such taxes due, noting such finding on the assessment. Thereupon notices of lien may be filed in accordance with section 61, and amendments thereto, or, in the director's discretion, a warrant may be issued for the collection of tax as provided in section 62, and amendments thereto. Any person liable for

tax, within 30 days from the date of filing of such notice of lien or warrant, may request review in the manner prescribed by K.S.A. 79-3226, and amendments thereto, on the correctness of the jeopardy assessment. If the director finds that in certain cases collection of the tax may be jeopardized by delay, the director, in the exercise of discretion, immediately may issue notice and demand for payment of tax found to be due. In such cases, collection may be stayed by the giving of such security as the director may consider adequate.

New Sec. 60. (a) The property of the estate of every decedent whose estate is required to file an estate tax return pursuant to K.S.A. 79-15,103, and amendments thereto, in whatever form of investment it may happen to be, shall be charged with a lien for all taxes, penalties and interest thereon which are or may become due on such property.

(b) Unless the estate tax imposed by this act is sooner paid in full, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction therefor, shall be divested of such lien.

(c) Except as otherwise provided, if the taxes imposed under this act are not paid when due, the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise or release of a power of appointment or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate, to the extent of the value of such property at the time of the decedent's death, shall be personally liable for such tax. The provisions of this subsection shall not apply to the trustee of an employee's trust which meets the requirements of section 401(a) of the federal internal revenue code. Any part of such property transferred by, or transferred by a transferee of such spouse, transferee, trustee, surviving tenant, person in possession or beneficiary to a purchaser or holder of a security interest shall be divested of the lien provided for in subsection (a) and a similar lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession or beneficiary or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

New Sec. 61. (a) Whenever the director has reason to believe that any property which is subject to tax, including proceeds from the sale or disposal of such property, may be transferred, commingled, disbursed, concealed within or removed from the state, or otherwise manipulated in order to frustrate or preclude the collection of tax from such property, the director may file against such property written notice of the lien imposed by section 60, and amendments thereto.

(b) A notice of lien shall be filed with the register of deeds in any county where any property subject to tax is located, upon forms prescribed by the secretary. In the event an exact tax liability has been determined, the notice may recite the amount of such liability.

(c) Upon satisfaction of the lien, or upon its release or divestiture in accordance with section 64, and amendments thereto, the director shall issue notice of the release of such lien, on forms prescribed by the director.

New Sec. 62. (a) If the personal representative fails to timely pay the taxes imposed by this act, the director may enforce the director's lien by the issuance of a warrant under the director's hand and official seal, directed to the sheriff of any county of the state, commanding such sheriff to levy upon and sell the real and personal property of the distributee found within the sheriff's county for the payment of the amount thereof, with the added penalty, interest and the cost of executing the warrant, and to return such warrant to the director and pay to the director the money collected by virtue thereof not more than 60 days from the date of the warrant. The sheriff, within five days after the receipt of the war-

rant, shall file with the clerk of the district court of the sheriff's county a copy thereof, and thereupon the clerk shall enter in the appearance docket in appropriate columns, the name of the distributee named in the warrant, the amount of the tax or portion thereof and interest for which the warrant is issued and the date such copy is filed. The amount of such warrant docketed shall thereupon become a lien upon the title to, and interest in, the real property of the distributee against whom it is issued in the same manner, as a judgment duly docketed in the office of such clerk. The sheriff shall proceed in the same manner and with like effect as prescribed by law with respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for the sheriff's services to be collected in the same manner.

(b) The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. In the discretion of the director, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director, and in the execution thereof such officer or employee shall have all the powers conferred by laws upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The distributee shall have the right to redeem the real estate within a period of 18 months from the date of such sale. If a warrant is returned, unsatisfied in full, the director shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the distributee for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any such warrants or upon any execution issued upon any judgment rendered in any action for estate taxes. The director shall have the right at any time after the warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of the tax is collected.

New Sec. 63. In cases where the tax is due and payable, the director of taxation may bring an action for collection. All actions shall be prosecuted by the attorney for the director in the name of the state, and such actions may be brought in the same courts as other actions for money.

New Sec. 64. The lien imposed by section 60, and amendments thereto, shall be divested or released only in accordance with the following provisions:

(a) The lien shall be divested upon the payment of all taxes, penalty and interest due;

(b) the lien shall be divested after 10 years from the date of the decedent's death;

(c) that portion of the decedent's property which is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien;

(d) the lien shall not affect any property after it has been sold or disposed of for value by the executors or administrators in accordance with K.S.A. 59-1410 and 59-1413, and amendments thereto, or otherwise in accordance with law, but in all such cases a lien shall attach to the proceeds realized from any such sale or other disposition for all taxes and interest thereon which are or may be due on such property. Tax due or payable from the proceeds of such sale or disposal of such property shall be collected by the personal representative in accordance with the provisions of section 56, and amendments thereto, or by the director in accordance with the provisions of section 62 or 63, and amendments thereto; and

(e) that portion of the decedent's property which must be sold, transferred or disposed of for the payment of taxes against the estate shall be divested of the lien, but only to the extent a specific release of has been granted by the director.

New Sec. 65. (a) Whenever the lien imposed by section 60, and

amendments thereto, has been released in accordance with the provisions of section 64, and amendments thereto, and the personal representative makes written request for proof of such release, the director shall furnish such personal representative with notice of release. Any such notice of release shall be in such form as prescribed by the director and may include use of or reference to the closing letter issued by the director or may be included as part of that closing letter.

(b) When the notice of release applies to real property, such notice may be filed in the office of the register of deeds in any county where any such real property included in the gross estate is located or, when the estate is involved in proceedings before the district court, with the court. At the discretion of the director, such notice of release may be filed by the director or may be provided to the personal representative for filing.

New Sec. 66. The provisions of sections 50 through 66 and amendments thereto shall be part of and supplemental to the Kansas estate tax act.

New Sec. 67. (a) The executive director of the state board of tax appeals shall charge and collect a filing fee, established by rules and regulations adopted by the state board of tax appeals, for any appeal in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding for such board to recover all or part of the costs of processing such actions incurred by the state board of tax appeals. No filing fee shall be imposed on applications by taxpayers for refunds of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, or for appeals from decisions rendered pursuant to K.S.A. 79-1448, and amendments thereto, with regard to single-family residential property. Not-for-profit organizations shall not be charged a filing fee exceeding \$10 for any appeal if the valuation of the property that is the subject of the controversy does not exceed \$100,000.

(b) There is hereby created in the state treasury the BOTA filing fee fund.

(c) The executive director of the board of tax appeals shall remit to the state treasurer at least monthly all tax appeal filing fees received by the state board of tax appeals. Upon receipt of any such remittance, the state treasurer shall deposit the amount in the state treasury to the credit of the BOTA filing fee fund.

(d) All expenditures from the BOTA filing fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director of the state board of tax appeals or a person or persons designated by such executive director.

New Sec. 68. (a) (1) Notwithstanding the provisions of any other law to the contrary, with respect to the following taxes administered by the department of revenue, an amnesty from the assessment or payment of all penalties and interest with respect to unpaid taxes or taxes due and owing shall apply upon compliance with the provisions of this section and if such tax liability is paid in full within the amnesty period, from October 1, 2003, to November 30, 2003: (A) Privilege tax under K.S.A. 79-1106 *et seq.* and amendments thereto; (B) taxes under the Kansas estate tax act, K.S.A. 2002 Supp. 79-15,100 *et seq.* and amendments thereto; (C) taxes under the Kansas income tax act, K.S.A. 79-3201 *et seq.* and amendments thereto; (D) taxes under the Kansas withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.* and amendments thereto; (E) taxes under the Kansas cigarette and tobacco products act, K.S.A. 79-3301 *et seq.* and amendments thereto; (F) taxes under the Kansas retailers' sales tax act, K.S.A. 79-3601 *et seq.* and amendments thereto and the Kansas compensating tax act, K.S.A. 79-3701 *et seq.* and amendments thereto; (G) local sales and use taxes under K.S.A. 12-187 *et seq.* and amendments thereto; (H) liquor enforcement tax under K.S.A. 79-4101 *et seq.* and amendments thereto; (I) liquor drink tax under K.S.A. 79-

41a01 *et seq.* and amendments thereto; and (J) mineral severance tax under K.S.A. 79-4216 *et seq.* and amendments thereto.

(2) Except for the Kansas privilege tax and individual and corporate income tax, amnesty shall apply only to tax liabilities due and unpaid for tax periods ending on or before December 31, 2002. For the Kansas privilege tax and individual and corporate income tax, amnesty shall apply only to tax liabilities due and unpaid for tax periods ending on or before December 31, 2001. For the eligible taxes and tax periods, amnesty shall apply to the under-reporting of such tax liabilities, the nonpayment of such taxes and the nonreporting of such tax liabilities.

(3) Amnesty shall not apply to any matter or matters for which, on or after February 6, 2003, any one of the following circumstances exist: (A) The taxpayer has received notice of the commencement of an audit; (B) an audit is in progress; (C) the taxpayer has received notice of an assessment pursuant to K.S.A. 79-2971 or 79-3643 and amendments thereto; (D) as a result of an audit, the taxpayer has received notice of a proposed or estimated assessment or notice of an assessment; (E) the time to administratively appeal an issued assessment has not yet expired; or (F) an assessment resulting from an audit, or any portion of such assessment, is pending in the administrative appeals process before the secretary or secretary's designee pursuant to K.S.A. 79-3226 or 79-3610 and amendments thereto or the board of tax appeals, or is pending in the judicial review process before any state or federal district or appellate court. Amnesty shall not apply to any matter that is the subject of an assessment, or any portion of an assessment, which has been affirmed by a reviewing state or federal district or appellate court. Amnesty shall not apply to any party to any criminal investigation or to any civil or criminal litigation that is pending in any court of the United States or this state for nonpayment, delinquency or fraud in relation to any tax imposed by the state of Kansas.

(b) Upon written application by the taxpayer, on forms prescribed by the secretary of revenue, and upon compliance with the provisions of this section, the department of revenue shall not seek to collect any penalty or interest which may be applicable with respect to taxes eligible for amnesty.

(c) Amnesty for penalties and interest shall be granted only to those eligible taxpayers who, within the amnesty period of October 1, 2003, to November 30, 2003, and in accordance with rules and regulations established by the secretary of revenue, have properly filed a tax return for each taxable period for which amnesty is requested, paid the entire balance of tax due and obtained approval of such amnesty by the department of revenue.

(d) If a taxpayer elects to participate in the amnesty program established pursuant to this section as evidenced by full payment of the tax due as established by the secretary of revenue, that election shall constitute an express and absolute relinquishment of all administrative and judicial rights of appeal with respect to such tax liability. No tax payment received pursuant to this section shall be eligible for refund or credit. No payment of penalties or interest made prior to October 1, 2003, shall be eligible for amnesty.

(e) For tax returns for which amnesty has been requested, nothing in this section shall be interpreted to prohibit the department from adjusting such tax return as a result of a federal, department or other state agency audit.

(f) Fraud or intentional misrepresentation of a material fact in connection with an application for amnesty shall void such application and any waiver of penalties and interest from amnesty.

(g) Discovery of fraud relating to the underlying tax liability shall void the abatement of any liability as a result of any amnesty.

(h) The department may promulgate such rules and regulations or issue administrative guidelines as are necessary to administer the provisions of this section.

(i) The provisions of this section shall be effective on and after July 1, 2003.

Sec. 69. K.S.A. 74-2433 and K.S.A. 2002 Supp. 79-15,101, 79-15,102, 79-15,103, 79-15,106, 79-15,107, 79-15,108, 79-15,109, 79-15,114, 79-15,115 and 79-15,127 are hereby repealed.

Sec. 70. On and after July 1, 2003, K.S.A. 12-188, 12-189a, 12-191, 12-191a, 12-192, 12-198, 72-6431, 75-5151, 79-3607, 79-3608 and 79-3651 and K.S.A. 2002 Supp. 12-187, 12-189, 79-201x, 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b, 79-32,100c, 79-32,206, 79-3602, 79-3603, 79-3606 and 79-3650 are hereby repealed.

Sec. 71. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.