

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2117

By Committee on Taxation

1-27

1 AN ACT concerning ~~sales and use~~ taxation; relating to imposition of  
2 **[sales and use] tax**;[,] exemptions; **[income taxation, retention of**  
3 **Kansas payroll withholding taxes by certain employers,**  
4 **requirements and procedures]**;amending K.S.A. 2010 Supp. 79-3603  
5 **and 79-3703** and repealing the existing ~~section sections~~.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

1 internal revenue code of 1986, as in effect on January 1, 2001;

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

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

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

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

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

36 (h) the gross receipts from the service of renting or leasing of tangible  
37 personal property except such tax shall not apply to the renting or leasing  
38 of machinery, equipment or other personal property owned by a city and  
39 purchased from the proceeds of industrial revenue bonds issued prior to  
40 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through  
41 12-1749, and amendments thereto, and any city or lessee renting or leasing  
42 such machinery, equipment or other personal property purchased with the  
43 proceeds of such bonds who shall have paid a tax under the provisions of

1 this section upon sales made prior to July 1, 1973, shall be entitled to a  
2 refund from the sales tax refund fund of all taxes paid thereon;

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

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

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

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

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

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

36 (n) the gross receipts received from dues charged by public and  
37 private clubs, drinking establishments, organizations and businesses,  
38 payment of which entitles a member to the use of facilities for recreation  
39 or entertainment, but such tax shall not be levied and collected upon the  
40 gross receipts received from: (1) Dues charged by any organization exempt  
41 from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A.  
42 79-201, and amendments thereto; and (2) sales of memberships in a  
43 nonprofit organization which is exempt from federal income taxation

1 pursuant to section 501 (c)(3) of the federal internal revenue code of 1986,  
 2 and whose purpose is to support the operation of a nonprofit zoo;

3 (o) the gross receipts received from the isolated or occasional sale of  
 4 motor vehicles or trailers but not including: (1) The transfer of motor  
 5 vehicles or trailers by a person to a corporation or limited liability  
 6 company solely in exchange for stock securities or membership interest in  
 7 such corporation or limited liability company; ~~or~~ (2) the transfer of motor  
 8 vehicles or trailers by one corporation or limited liability company to  
 9 another when all of the assets of such corporation or limited liability  
 10 company are transferred to such other corporation or limited liability  
 11 company; or (3) the sale of motor vehicles or trailers which are subject to  
 12 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and  
 13 amendments thereto, by an immediate family member to another  
 14 immediate family member. For the purposes of clause (3), immediate  
 15 family member means lineal ascendants or descendants, and their spouses.  
 16 ~~Any amount of sales tax paid pursuant to the Kansas retailers sales tax act~~  
 17 ~~on the isolated or occasional sale of motor vehicles or trailers on and after~~  
 18 ~~July 1, 2004, which the base for computing the tax was the value pursuant~~  
 19 ~~to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments~~  
 20 ~~thereto, when such amount was higher than the amount of sales tax which~~  
 21 ~~would have been paid under the law as it existed on June 30, 2004, shall be~~  
 22 ~~refunded to the taxpayer pursuant to the procedure prescribed by this~~  
 23 ~~section. Such refund shall be in an amount equal to the difference between~~  
 24 ~~the amount of sales tax paid by the taxpayer and the amount of sales tax~~  
 25 ~~which would have been paid by the taxpayer under the law as it existed on~~  
 26 ~~June 30, 2004. Each claim for a sales tax refund shall be verified and~~  
 27 ~~submitted not later than six months from the effective date of this act to the~~  
 28 ~~director of taxation upon forms furnished by the director and shall be~~  
 29 ~~accompanied by any additional documentation required by the director.~~  
 30 ~~The director shall review each claim and shall refund that amount of tax~~  
 31 ~~paid as provided by this act. All such refunds shall be paid from the sales~~  
 32 ~~tax refund fund, upon warrants of the director of accounts and reports~~  
 33 ~~pursuant to vouchers approved by the director of taxation or the director's~~  
 34 ~~designee. No refund for an amount less than \$10 shall be paid pursuant to~~  
 35 ~~this act. In determining the base for computing the tax on such isolated or~~  
 36 ~~occasional sale, the fair market value of any motor vehicle or trailer traded~~  
 37 ~~in by the purchaser to the seller may be deducted from the selling price;~~

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

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

5 For the purposes of this subsection:

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

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

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

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

28 (5) "utility structure" shall mean transmission and distribution lines  
29 owned by an independent transmission company or cooperative, the  
30 Kansas electric transmission authority or natural gas or electric public  
31 utility; and

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

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

43 (r) the gross receipts from fees or charges made under service or

1 maintenance agreement contracts for services, charges for the providing of  
 2 which are taxable under the provisions of subsection (p) or (q);

3 (s) ~~on and after January 1, 2005~~, the gross receipts received from the  
 4 sale of prewritten computer software and the sale of the services of  
 5 modifying, altering, updating or maintaining prewritten computer  
 6 software, whether the prewritten computer software is installed or  
 7 delivered electronically by tangible storage media physically transferred to  
 8 the purchaser or by load and leave;

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

10 (u) the gross receipts received from the sale of prepaid calling service  
 11 and prepaid wireless calling service as defined in K.S.A. 2010 Supp. 79-  
 12 3673, and amendments thereto; and

13 (v) ~~the gross receipts received from the sales of bingo cards, bingo~~  
 14 ~~faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq.,~~  
 15 ~~and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,~~  
 16 ~~2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before~~  
 17 ~~July 1, 2002. from and after July 1, 2002, all sales of bingo cards, bingo~~  
 18 ~~faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq.,~~  
 19 ~~and amendments thereto, shall be exempt from taxes imposed pursuant to~~  
 20 ~~this section.~~

21 **Sec. 2. K.S.A. 2010 Supp. 79-3703 is hereby amended to read as**  
 22 **follows: 79-3703. There is hereby levied and there shall be collected**  
 23 **from every person in this state a tax or excise for the privilege of**  
 24 **using, storing, or consuming within this state any article of tangible**  
 25 **personal property. Such tax shall be levied and collected in an amount**  
 26 **equal to the consideration paid by the taxpayer multiplied by the rate**  
 27 **of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, and**  
 28 **commencing July 1, 2013, at the rate of 5.7%. Within a redevelopment**  
 29 **district established pursuant to K.S.A. 74-8921, and amendments thereto,**  
 30 **there is hereby levied and there shall be collected and paid an additional**  
 31 **tax of 2% until the earlier of: (1) The date the bonds issued to finance or**  
 32 **refinance the redevelopment project undertaken in the district have been**  
 33 **paid in full; or (2) the final scheduled maturity of the first series of bonds**  
 34 **issued to finance the redevelopment project. All property purchased or**  
 35 **leased within or without this state and subsequently used, stored or**  
 36 **consumed in this state shall be subject to the compensating tax if the**  
 37 **same property or transaction would have been subject to the Kansas**  
 38 **retailers' sales tax had the transaction been wholly within this state.**

39 [New Sec. 3. (a) On or after July 1, 2011, any qualified new  
 40 company as defined in subsection (c)(1), shall be eligible to retain 95%  
 41 of the qualified new company's Kansas payroll withholding taxes upon  
 42 wages paid by such qualified new company for a period of one year  
 43 from the date the qualified company establishes a new business and

1 commences business operations.

2 (b) Any qualified new company shall submit in a form and in a  
3 manner prescribed by the secretary, information that proves that the  
4 applicant is a qualified new company, including the date of  
5 establishment of the new business and commencement of business  
6 operations, the number of employees hired by the qualified new  
7 company, the amount of gross wages being paid to each employee and  
8 such other information as required by the secretary. If the qualified  
9 new company fails to meet the provisions of this section, the qualified  
10 new company shall not be entitled to any further benefits provided  
11 under this section. In such case, the qualified new company shall be  
12 required to remit to the state an amount equal to the aggregate Kansas  
13 payroll withholding taxes retained by the qualified new company  
14 pursuant to this section as of the date the qualified new company fails  
15 to comply with the provisions of this section.

16 (c) As used in this section: (1) "Qualified new company" means a  
17 company which establishes a new business and commences business  
18 operations on or after July 1, 2011, and has 10 or less employees. If a  
19 company commences business operations with 10 or less employees  
20 and hires additional employees during the first year of operation to  
21 exceed this ten-employee limitation, such company shall still qualify  
22 for benefits pursuant to this section for the first 10 employees for such  
23 first year of operation but shall not be eligible for such benefits for any  
24 employees above the first 10 employees. Such company shall include a  
25 person, for-profit corporation, limited liability company, S  
26 corporation, partnership, registered limited liability partnership, and  
27 sole proprietorship that is subject to the Kansas income tax act, K.S.A.  
28 79-3201 et seq., and amendments thereto. No company or person shall  
29 be eligible under this section if such person, company or ownership  
30 interest of such company had an ownership interest in a business of  
31 the same nature or character within the one-year period prior to  
32 commencement of the new business, or if the secretary determines  
33 such company created the new company for the purpose of avoiding  
34 taxation; and

35 (2) "secretary" means the secretary of the department of  
36 revenue.

37 (d) The secretary of revenue is hereby authorized to adopt rules  
38 and regulations necessary to administer the provisions of this section.]

39 ~~Sec. 2-3. [4.]~~ K.S.A. 2010 Supp. 79-3603 and 79-3703 ~~is~~ are hereby  
40 repealed.

41 ~~Sec. 3-4. [5.]~~ This act shall take effect and be in force from and after  
42 its publication in the statute book.