

*As Amended by Senate Committee*

*Session of 2017*

**SENATE BILL No. 111**

By Committee on Assessment and Taxation

1-31

1 AN ACT concerning sales and use taxation; relating to the administration  
2 thereof; required notices ~~and reports~~.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through ~~6~~ 5, and amendments  
6 thereto:

7 (a) "Director" means the state director of taxation.

8 (b) "Kansas purchase" means:

9 (1) In the case of goods that are shipped, a Kansas purchase is one  
10 that is shipped into Kansas;

11 (2) with respect to sales of goods that are downloaded or otherwise  
12 delivered electronically:

13 (A) If the purchaser provides a "bill to" address, then a Kansas  
14 purchase is one for which the "bill to" address is in Kansas; or

15 (B) if the purchaser does not provide a "bill to" address, then the  
16 retailer that does not collect Kansas sales tax shall determine whether a  
17 purchaser is in Kansas, and is therefore a Kansas purchaser, using any  
18 other commercially reasonable method based on the business's existing  
19 billing, customer-tracking or other systems.

20 A "Kansas purchase" shall not include any purchases or rentals of VHS  
21 tapes, DVDs, blu-ray disks or other video materials to the extent that  
22 disclosure of the purchasers of such items would violate 18 U.S.C. § 2710.

23 (c) "Kansas purchaser" means:

24 (1) With respect to sales of goods that are shipped, a Kansas  
25 purchaser is a purchaser that requests the goods be shipped into Kansas. If  
26 a purchase is made by one party, who may be inside or outside of Kansas,  
27 and shipped to a party in Kansas, the Kansas purchaser is the purchaser of  
28 the goods, not the recipient of the goods; or

29 (2) with respect to sales of goods that are downloaded or otherwise  
30 delivered electronically:

31 (A) If the purchaser provides a "bill to" address, then a Kansas  
32 purchaser is a purchaser whose "bill to" address is in Kansas; or

33 (B) if the purchaser does not provide a "bill to" address, then the  
34 retailer that does not collect Kansas sales tax shall determine whether a  
35 purchaser is in Kansas, and is therefore a Kansas purchaser, using any  
36 other commercially reasonable method based on the business's existing

1 billing, customer-tracking or other systems.

2 (d) (1) "Retailer that does not collect Kansas sales tax" means a  
3 retailer that sells goods to Kansas purchasers and that does not collect  
4 Kansas sales or use tax. A retailer that does not collect Kansas sales tax  
5 includes a retailer that makes sales in Kansas both by means of download  
6 of digital goods or software and by means of shipping or otherwise  
7 physically delivering goods to a Kansas purchaser.

8 (2) A "retailer that does not collect Kansas sales tax" does not  
9 include:

10 (A) A retailer that makes sales in Kansas solely by means of  
11 download of digital goods or software; or

12 (B) a retailer that makes less than \$100,000 in total gross sales in  
13 Kansas in the prior calendar year and that reasonably expects total gross  
14 sales in Kansas in the current calendar year will be less than \$100,000.

15 (e) "Secretary" means the secretary of revenue.

16 Sec. 2. A retailer that does not collect Kansas sales tax who makes  
17 sales to a Kansas purchaser shall maintain records and books of such sales  
18 in the same manner as provided in K.S.A. 79-3609, and amendments  
19 thereto. If any such retailer fails to voluntarily furnish any of the  
20 information specified in K.S.A. 79-3609(a), and amendments thereto,  
21 when requested by the director, or the director's duly authorized agents and  
22 employees, the director may issue subpoenas to compel access to or for the  
23 production of such books, papers, records, invoices or documents in the  
24 custody of or to which the retailer has access, or to compel the appearance  
25 of such retailer, and may issue interrogatories to any such retailer to the  
26 same extent and subject to the same limitations as would apply if the  
27 subpoena or interrogatories were issued or served in aid of a civil action in  
28 the district court. The director may administer oaths and take depositions  
29 to the same extent and subject to the same limitations as would apply if the  
30 deposition was in aid of a civil action in the district court. In case of the  
31 refusal of any retailer to comply with any subpoena or interrogatory or to  
32 testify to any matter which such person may be lawfully questioned, the  
33 district court of any county may, upon application of the director, order  
34 such retailer to comply with such subpoena or interrogatory or to testify.  
35 Failure to obey the court's order may be punished by the court as  
36 contempt. Subpoenas or interrogatories issued under the provisions of this  
37 section may be served upon individuals and corporations in the manner  
38 provided in K.S.A. 60-304, and amendments thereto, for the service of  
39 process by any officer authorized to serve subpoenas in civil actions or by  
40 the director.

41 Sec. 3. (a) (1) Each retailer that does not collect Kansas sales tax shall  
42 notify Kansas purchasers that sales or use tax is due on all purchases made  
43 from the retailer that are not exempt from sales tax and that the state of

1 Kansas requires the purchaser to report use taxes due on their K-40 tax  
2 form. Such notice must be provided with respect to each transaction  
3 between the retailer that does not collect Kansas sales tax and a Kansas  
4 purchaser. Such notice must be clearly legible, reasonably prominent and  
5 located in close proximity to the total price.

6 (2) The notice required by this section shall contain the following  
7 information:

8 (A) A statement indicating that the retailer does not collect Kansas  
9 sales or use tax;

10 (B) the purchase is not exempt from Kansas sales or use tax merely  
11 because it is made over the internet or by other remote means; and

12 (C) the state of Kansas requires a Kansas purchaser to report the use  
13 tax due on such purchaser's K-40 tax form.

14 (3) Failure to provide the notice required by subsection (a) shall  
15 subject the retailer to a penalty of \$5 for each such failure. The director  
16 may waive all or a portion of such penalty for reasonable cause shown.

17 (b) (1) Each retailer that does not collect Kansas sales tax shall send  
18 an annual notice to all Kansas purchasers by January 31 of each year  
19 summarizing the Kansas purchases of a Kansas purchaser for the  
20 preceding calendar year. Such notice shall be sent separately to all Kansas  
21 purchasers by first-class mail, shall include the words "Important Tax  
22 Document Enclosed" on the exterior of the mailing and shall not be  
23 included with any other shipments.

24 (2) The notice required by this subsection shall include the following  
25 information:

26 (A) The name of the retailer;

27 (B) the total amount paid by the Kansas purchaser for Kansas  
28 purchases made from the retailer in the previous calendar year. Such  
29 notification shall also include, if available, the dates of purchase, the  
30 amounts of each purchase and the category of the purchase, including, if  
31 known by the retailer, whether the purchase is exempt or not exempt from  
32 taxation;

33 (C) that the state of Kansas requires use taxes due to be reported on  
34 the K-40 tax form; *and*

35 ~~(D) that the retailer is required by law to provide the Kansas~~  
36 ~~department of revenue with the total dollar amount of purchases made by~~  
37 ~~the Kansas purchaser, however, no information about the purchase other~~  
38 ~~than the dollar amount will be provided to the department; and~~

39 ~~(E)—any other information required by the director.~~

40 (3) If the retailer is required by another state to provide a similar  
41 notice, and the retailer provides a single such notice to all purchasers with  
42 respect to items purchased for delivery in all states, the notice required by  
43 subsection (b) shall be sufficient if it contains substantially all the

1 information required in a form that is generalized to any state.

2 (4) Any retailer that does not collect Kansas sales tax that is required  
3 to send an annual notice to Kansas purchasers as required by this  
4 subsection shall not be required to send the notice to any de minimis  
5 Kansas purchaser. A de minimis Kansas purchaser shall be a Kansas  
6 purchaser whose total Kansas purchases for the prior calendar year are less  
7 than \$500. Such retailer shall make commercially reasonable business  
8 efforts, based on the business's existing billing, customer-tracking or other  
9 systems, to identify multiple purchases made by a single Kansas purchaser.

10 (5) Failure to provide the notice required by subsection (b) shall  
11 subject the retailer to a penalty of \$10 for each such failure. The director  
12 may waive all or a portion of such penalty for reasonable cause shown.

13 ~~Sec. 4.—(a) On or before March 1 of each year, each retailer that does~~  
14 ~~not collect Kansas sales tax who is required to file a notice under the~~  
15 ~~provisions of section 3(b), and amendments thereto, shall file an annual~~  
16 ~~statement for each purchaser to the department of revenue on such forms~~  
17 ~~as approved by the department. Such notice shall contain the following~~  
18 ~~information:~~

19 (1) ~~The name of each Kansas purchaser;~~

20 (2) ~~the billing address of each Kansas purchaser, if the information~~  
21 ~~was provided to the retailer;~~

22 (3) ~~the shipping address of each Kansas purchaser, if the information~~  
23 ~~was provided to the retailer; and~~

24 (4) ~~the total amount of Kansas purchases made by each Kansas~~  
25 ~~purchaser during the prior calendar year. No other information about the~~  
26 ~~purchase shall be provided.~~

27 (b) ~~If the retailer has more than one Kansas billing address or more~~  
28 ~~than one Kansas shipping address for a Kansas purchaser, then the retailer~~  
29 ~~shall provide all such addresses of the Kansas purchaser.~~

30 (c) ~~Any retailer who is not required to send any notices pursuant to~~  
31 ~~the provisions of section 3(b)(4), and amendments thereto, shall also be~~  
32 ~~exempt from the requirements to send the report required by this section.~~

33 (d) ~~If a retailer is required to provide any notices pursuant to the~~  
34 ~~provisions of section 3(b), and amendments thereto, then such retailer~~  
35 ~~must include all the purchases made by all Kansas purchasers in its report,~~  
36 ~~including any purchases made by de minimis Kansas purchasers as~~  
37 ~~determined under section 3(b)(4), and amendments thereto.~~

38 (e) ~~Failure to file the notice required by this section shall subject the~~  
39 ~~retailer to a penalty equal to \$10 times the number of Kansas purchasers~~  
40 ~~that should have been included in the report. The director may waive all or~~  
41 ~~a portion of such penalty for reasonable cause shown.~~

42 ~~Sec. 5. 4. Any information obtained by the department of revenue in~~  
43 ~~connection with the administration of sections 1 through 3, and~~

1 amendments thereto, shall be subject to the same confidentiality provisions  
2 as set forth in K.S.A. 79-3614, and amendments thereto.

3 ~~Sec.—6.~~ 5. The secretary may adopt any rules and regulations  
4 necessary to administer the provisions of sections 1 through ~~5~~ 4, and  
5 amendments thereto.

6 *New Sec. 6. The provisions of sections 1 through 6, and*  
7 *amendments thereto, shall be part of and supplemental to the Kansas*  
8 *retailers' sales tax act.*

9 Sec. 7. This act shall take effect and be in force from and after  
10 *January 1, 2018, and* its publication in the statute book.