

## HOUSE BILL No. 2763

By Committee on Taxation

2-21

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1 AN ACT concerning taxation; enacting the Kansas economic freedom act  
2 of 2014; eliminating income and sales taxes; imposing a consumption  
3 tax; providing certain duties and requirements on retailers and  
4 providers and the department of revenue; exemptions; consumption  
5 allowance; creating the consumption tax transition committee;  
6 amending K.S.A. 2011 Supp. 79-3702 and repealing the existing  
7 section; also repealing K.S.A. 79-3294, 79-3294a and 79-3294b and  
8 K.S.A. 2011 Supp. 79-1107, 79-1108, 79-3295, 79-3296, 79-3298, 79-  
9 3299, 79-32,100, 79-32,100a, 79-32,100b, 79-32,100c, 79-32,100d, 79-  
10 32,100e, 79-32,110 and 79-3603.

11

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

13 New Section 1. (a) The provisions of this act shall be known and  
14 may be cited as the Kansas economic freedom act of 2014.

15 (b) The purpose of this act is to remove the state's dependence on the  
16 federal income tax system, remove the burden of collecting the state  
17 income tax from Kansas producers of goods and services, improve the  
18 efficiency of collecting the tax, apply a uniform tax rate for all personal  
19 consumption taxpayers, compensate retail tax collectors with a fee to  
20 offset cost of collecting the tax, encourage business expansion in Kansas  
21 without rewarding selected interest groups or organizations with special  
22 benefits, and provide a family consumption allowance in order to save all  
23 Kansas citizens from paying taxes on any amount of spending up to the  
24 official American poverty level needed for obtaining essential goods and  
25 services.

26 (c) Where applicable, terms in this act shall be defined as provided in  
27 K.S.A. 79-3602, and amendments thereto.

28 (d) The provisions of this act shall be effective on and after January 1,  
29 2014.

30 New Sec. 2. (a) On and after January 1, 2014, the Kansas income tax  
31 imposed pursuant to K.S.A. 79-32,110, and amendments thereto, the  
32 Kansas retailers' sales tax imposed pursuant to K.S.A. 79-3603, and  
33 amendments thereto, and the Kansas compensating tax are repealed and  
34 shall not be levied or imposed thereby.

35 (b) Any tax described in subsection (a) which is due and remains  
36 outstanding and payable by a taxpayer on January 1, 2014, shall remain

1 due and payable to the state in accordance with the laws in effect when the  
2 tax obligations of the taxpayer were incurred.

3 (c) Any income tax credit which is outstanding on January 1, 2014, is  
4 no longer valid on and after such date.

5 New Sec. 3. (a) Except as provided in section 4, and amendments  
6 thereto, for the privilege of engaging in the business of selling goods at the  
7 point of sale in this state or rendering or furnishing any services taxable  
8 under this act, there is hereby levied and there shall be collected and paid a  
9 consumption tax on the sales or selling price of new personally consumed  
10 goods and services at the rate of 5.7%.

11 (b) In addition to the imposition of a consumption tax on goods and  
12 services as provided in subsection (a), such tax shall be levied on:

13 (1) Sales of digital goods, digital codes and subscriptions to digital  
14 goods, to a purchaser who is a personal consumer, including sales of the  
15 right of permanent use granted by the seller and sales with less than the  
16 right of permanent use granted by the seller, and including sales when such  
17 use is conditional upon continued payment from the purchaser and when  
18 such use is not conditional upon continued payment from the purchaser. As  
19 used in this subsection:

20 (A) "Digital audio works" means works that result from the fixation  
21 of a series of musical, spoken or other sounds, including ringtones;

22 (B) "digital audio-visual works" means a series of related images  
23 which, when shown in succession, impart an impression of motion,  
24 together with accompanying sounds, if any;

25 (C) "digital books" means works that are generally recognized in the  
26 ordinary and usual sense as books;

27 (D) "digital code" means a code, which provides a purchaser with a  
28 right to obtain one or more products transferred electronically from within  
29 one or more product categories having the same tax treatment. A digital  
30 code may be obtained by any means, including email or by tangible means  
31 regardless of its designation as song code, video code or book code;

32 (E) "digital goods" means sounds, images, data, facts or information,  
33 or any combination thereof, transferred electronically, including, but not  
34 limited to, specified digital products and other products transferred  
35 electronically not included within the definition of specified digital  
36 products; "digital goods" does not include telecommunications services as  
37 defined in K.S.A. 79-3602, and amendments thereto, ancillary services as  
38 defined in K.S.A. 79-3602, and amendments thereto, or computer software  
39 as defined in K.S.A. 79-3602, and amendments thereto;

40 (F) "electronically transferred" means obtained by the purchaser by  
41 means other than tangible storage media;

42 (G) "permanent" means perpetual or for an indefinite or unspecified  
43 length of time. A right of permanent use is presumed to have been granted

1 unless the agreement between the seller and the purchaser specifies or the  
2 circumstances surrounding the transaction suggest or indicate that the right  
3 to use terminates on the occurrence of a condition subsequent;

4 (H) "personal consumer" includes any person other than a person who  
5 receives by contract a product transferred electronically for further  
6 commercial broadcast, rebroadcast, transmission, retransmission,  
7 licensing, relicensing, distribution, redistribution or exhibition of the  
8 product, in whole or in part, to another person or persons. A person that  
9 purchases products transferred electronically or the code for specified  
10 digital products for the purpose of giving away such products or code shall  
11 not be considered to have engaged in the distribution or redistribution of  
12 such products or code and shall be treated as an end user;

13 (I) "ringtones" means digitized sound files that are downloaded onto a  
14 device and that may be used to alert the customer with respect to a  
15 communication;

16 (J) "specified digital products" means electronically transferred  
17 digital audio works, digital audio-visual works and digital books; and

18 (K) "subscription" means an agreement with a seller that grants a  
19 consumer the right to obtain products transferred electronically from  
20 within one or more product categories having the same tax treatment, in a  
21 fixed quantity or for a fixed period of time, or both;

22 (2) installment sales. Such consumption tax shall be prorated and  
23 collected by the retailer or provider at the time of each installment  
24 payment;

25 (3) insurance premiums. Such tax shall be prorated and collected by  
26 the insurance company at the time of payment of the premium. The rate of  
27 such tax shall be an amount equal to the difference between the rate set in  
28 subsection (a) and the amount of premium tax set pursuant to K.S.A. 40-  
29 252, and amendments thereto;

30 (4) medical insurance copayments; and

31 (5) rental payments for real property and tangible personal property  
32 for personal use.

33 New Sec. 4. The tax levied under this act shall be paid by the  
34 personal consumer to the retailer or provider and it shall be the duty of  
35 each and every retailer and provider in this state to collect from the  
36 personal consumer, the full amount of the tax imposed or in an amount  
37 equal as nearly as possible or practicable to the average equivalent thereof.  
38 Such tax shall be a debt from the personal consumer to the retailer, when  
39 so added to the original purchase price, and shall be recoverable at law in  
40 the same manner as other debts. In the event the full amount of the tax  
41 provided by this act is not paid to the retailer by the personal consumer, the  
42 director of taxation may proceed directly against the personal consumer to  
43 collect the full amount of the tax due on the retail sale.

1 New Sec. 5. Each personal consumer shall receive a sales receipt  
2 from the retailer or provider at the time of purchase. Such receipt shall  
3 contain the before-tax price of the goods or service, the consumption tax  
4 rate, the total personal consumption tax rate on all services rendered and  
5 products sold for personal consumption, and the total monetary amount of  
6 sales transaction.

7 New Sec. 6. The following shall be exempt from the tax imposed by  
8 this act: (a) All sales of new or used residential or commercial real estate;

9 (b) all sales of motor-vehicle fuel or other articles upon which a sales  
10 or excise tax has been paid, not subject to refund, under the laws of this  
11 state except cigarettes as defined by K.S.A. 79-3301, and amendments  
12 thereto, cereal malt beverages and malt products as defined by K.S.A. 79-  
13 3817, and amendments thereto, including wort, liquid malt, malt syrup and  
14 malt extract, which is not subject to taxation under the provisions of  
15 K.S.A. 79-41a02, and amendments thereto, motor vehicles taxed pursuant  
16 to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A.  
17 65-3424d, and amendments thereto, drycleaning and laundry services  
18 taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and gross  
19 receipts from regulated sports contests taxed pursuant to the Kansas  
20 professional regulated sports act, and amendments thereto;

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

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

39 (e) all rentals of nonsectarian textbooks by public or private  
40 elementary or secondary schools;

41 (f) any motor vehicle, semitrailer or pole trailer, as such terms are  
42 defined by K.S.A. 8-126, and amendments thereto, or aircraft sold and  
43 delivered in this state to a *bona fide* resident of another state, which motor

1 vehicle, semitrailer, pole trailer or aircraft is not to be registered or based  
2 in this state and which vehicle, semitrailer, pole trailer or aircraft will not  
3 remain in this state more than 10 days;

4 (g) all isolated or occasional sales of tangible personal property,  
5 services, substances or things;

6 (h) all sales of tangible personal property which become an ingredient  
7 or component part of tangible personal property or services produced,  
8 manufactured or compounded for ultimate sale at retail within or without  
9 the state of Kansas; and any such producer, manufacturer or compounder  
10 may obtain from the director of taxation and furnish to the supplier an  
11 exemption certificate number for tangible personal property for use as an  
12 ingredient or component part of the property or services produced,  
13 manufactured or compounded;

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

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

31 (k) all sales of farm machinery and equipment or aquaculture  
32 machinery and equipment, repair and replacement parts therefor and  
33 services performed in the repair and maintenance of such machinery and  
34 equipment. For the purposes of this subsection the term "farm machinery  
35 and equipment or aquaculture machinery and equipment" shall include a  
36 work-site utility vehicle, as defined in K.S.A. 8-126, and amendments  
37 thereto, and is equipped with a bed or cargo box for hauling materials, and  
38 shall also include machinery and equipment used in the operation of  
39 Christmas tree farming but shall not include any passenger vehicle, truck,  
40 truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as  
41 such terms are defined by K.S.A. 8-126, and amendments thereto. "Farm  
42 machinery and equipment" includes precision farming equipment that is  
43 portable or is installed or purchased to be installed on farm machinery and

1 equipment. "Precision farming equipment" includes the following items  
2 used only in computer-assisted farming, ranching or aquaculture  
3 production operations: Soil testing sensors, yield monitors, computers,  
4 monitors, software, global positioning and mapping systems, guiding  
5 systems, modems, data communications equipment and any necessary  
6 mounting hardware, wiring and antennas. Each purchaser of farm  
7 machinery and equipment or aquaculture machinery and equipment  
8 exempted herein must certify in writing on the copy of the invoice or sales  
9 ticket to be retained by the seller that the farm machinery and equipment  
10 or aquaculture machinery and equipment purchased will be used only in  
11 farming, ranching or aquaculture production. Farming or ranching shall  
12 include the operation of a feedlot and farm and ranch work for hire and the  
13 operation of a nursery;

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

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

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

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

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

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

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

36 (2) For purposes of this subsection:

37 (A) "Integrated production operation" means an integrated series of  
38 operations engaged in at a manufacturing or processing plant or facility to  
39 process, transform or convert tangible personal property by physical,  
40 chemical or other means into a different form, composition or character  
41 from that in which it originally existed. Integrated production operations  
42 shall include: (i) Production line operations, including packaging  
43 operations; (ii) preproduction operations to handle, store and treat raw

1 materials; (iii) post production handling, storage, warehousing and  
2 distribution operations; and (iv) waste, pollution and environmental  
3 control operations, if any;

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

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

18 (D) "manufacturing or processing business" means a business that  
19 utilizes an integrated production operation to manufacture, process,  
20 fabricate, finish, or assemble items for wholesale and retail distribution as  
21 part of what is commonly regarded by the general public as an industrial  
22 manufacturing or processing operation or an agricultural commodity  
23 processing operation. (i) Industrial manufacturing or processing operations  
24 include, by way of illustration but not of limitation, the fabrication of  
25 automobiles, airplanes, machinery or transportation equipment, the  
26 fabrication of metal, plastic, wood, or paper products, electricity power  
27 generation, water treatment, petroleum refining, chemical production,  
28 wholesale bottling, newspaper printing, ready mixed concrete production,  
29 and the remanufacturing of used parts for wholesale or retail sale. Such  
30 processing operations shall include operations at an oil well, gas well,  
31 mine or other excavation site where the oil, gas, minerals, coal, clay, stone,  
32 sand or gravel that has been extracted from the earth is cleaned, separated,  
33 crushed, ground, milled, screened, washed, or otherwise treated or  
34 prepared before its transmission to a refinery or before any other wholesale  
35 or retail distribution. (ii) Agricultural commodity processing operations  
36 include, by way of illustration but not of limitation, meat packing, poultry  
37 slaughtering and dressing, processing and packaging farm and dairy  
38 products in sealed containers for wholesale and retail distribution, feed  
39 grinding, grain milling, frozen food processing, and grain handling,  
40 cleaning, blending, fumigation, drying and aeration operations engaged in  
41 by grain elevators or other grain storage facilities. (iii) Manufacturing or  
42 processing businesses do not include, by way of illustration but not of  
43 limitation, nonindustrial businesses whose operations are primarily retail

1 and that produce or process tangible personal property as an incidental part  
2 of conducting the retail business, such as retailers who bake, cook or  
3 prepare food products in the regular course of their retail trade, grocery  
4 stores, meat lockers and meat markets that butcher or dress livestock or  
5 poultry in the regular course of their retail trade, contractors who alter,  
6 service, repair or improve real property, and retail businesses that clean,  
7 service or refurbish and repair tangible personal property for its owner;

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

16 (F) "primary" or "primarily" mean more than 50% of the time.

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

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

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

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

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

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

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

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

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

43 (I) to transmit or transport electricity, coke, gas, water, steam or



1 similar substances used in production operations from the point of  
2 generation, if produced by the manufacturer or processor at the plant site,  
3 to that manufacturer's production operation; or, if purchased or delivered  
4 from offsite, from the point where the substance enters the site of the plant  
5 or facility to that manufacturer's production operations;

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

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

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

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

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

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

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

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

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

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

12 (E) furniture and other furnishings;

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

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

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

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

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

26 (6) Subsections (3) and (5) shall not be construed as exclusive listings  
27 of the machinery and equipment that qualify or do not qualify as an  
28 integral or essential part of an integrated production operation. When  
29 machinery or equipment is used as an integral or essential part of  
30 production operations part of the time and for nonproduction purpose at  
31 other times, the primary use of the machinery or equipment shall  
32 determine whether or not such machinery or equipment qualifies for  
33 exemption.

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

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

40 (r) on and after January 1, 1999, and before January 1, 2000, all sales  
41 of materials and services purchased by any class II or III railroad as  
42 classified by the federal surface transportation board for the construction,  
43 renovation, repair or replacement of class II or III railroad track and

1 facilities used directly in interstate commerce. In the event any such track  
2 or facility for which materials and services were purchased sales tax  
3 exempt is not operational for five years succeeding the allowance of such  
4 exemption, the total amount of sales tax which would have been payable  
5 except for the operation of this subsection shall be recouped in accordance  
6 with rules and regulations adopted for such purpose by the secretary of  
7 revenue.

8 New Sec. 7. Each retailer or provider shall remit to the department of  
9 revenue by the opening of the 10<sup>th</sup> normal business day and hour of each  
10 month the total amount of Kansas personal consumption taxes collected  
11 and remitted by such retailer or provider during the previous calendar  
12 month, less 0.25% of such total amount. Such 0.25% retained by such  
13 retailer or provider shall serve to compensate such retailer or provider for  
14 collecting and remitting the Kansas personal consumption tax on behalf of  
15 and for the state of Kansas. The amount collected and remitted and the  
16 amount retained by such retailer or provider shall be shown on the  
17 monthly report. Generally accepted accounting procedures (GAAP) shall  
18 apply. Such retailer or provider shall be subject to audit at any time by the  
19 department of revenue.

20 New Sec. 8. (a) Each Kansas resident taxpayer having a valid social  
21 security number shall receive a monthly family consumption allowance to  
22 be distributed by the Kansas department of revenue, on or before the first  
23 day of each month. Such family consumption allowance shall be  
24 determined annually and be equal to the product of the rate of  
25 consumption tax as provided in section 2, and amendments thereto, and  $\frac{1}{12}$   
26 of the annual poverty guidelines established in the federal register by the  
27 U.S. department of health and human services pursuant to 42 U.S.C. §  
28 9902(2), as amended.

29 (b) In the administration of this section, the following conditions shall  
30 apply:

31 (1) Such family consumption allowance or allowances shall be  
32 bundled as a single payment to each household, to include all eligible  
33 Kansas residents who share the same dwelling unit;

34 (2) the consumption allowance payee will be the designated head of  
35 household;

36 (3) consumption allowance or allowances paid to each respective  
37 payee shall be deposited directly by electronic means into a registered  
38 account owned by the payee at a licensed financial institution as  
39 designated by the payee;

40 (4) the payee shall file electronically a regular yearly report with the  
41 department of revenue every September, but no later than September 30,  
42 certifying the name and valid social security number of each member  
43 residing in the same dwelling unit. Whenever the payee, number, or

1 identities of any members of the household change, the payee must  
2 immediately notify the department of revenue, and submit electronically a  
3 revised report within two weeks or less; and

4 (5) the payee's identity and signature must appear on the certified  
5 report. The penalty for filing a false certificate shall be the same as  
6 provided in K.S.A. 79-3615, and amendments thereto, for filing a false  
7 return.

8 New Sec. 9. It shall be unlawful for any retailer to advertise or hold  
9 out, or state to the public, or to any consumer, directly or indirectly, that  
10 the tax, or any part thereof, imposed by this act will be assumed or  
11 absorbed by the retailer, or that it will not be considered as an element in  
12 the price to the consumer, or if added, that it, or any part thereof, will be  
13 refunded.

14 New Sec. 10. (a) Except as otherwise provided, it shall be unlawful  
15 for any person to engage in the business of selling goods at retail or  
16 furnishing taxable services in this state without a registration certificate  
17 from the director of taxation. Application for such certificate shall be made  
18 to the director upon forms furnished by the director, and shall state the  
19 name of the applicant, the address or addresses at which the applicant  
20 proposes to engage in such business, and the character of such business.  
21 Utilities taxable under this act shall not be required to register but shall  
22 comply with all other provisions of this act. The taxpayer may be  
23 registered by an agent. Such appointment of the agent by the taxpayer shall  
24 be in writing and submitted to the director. The taxpayer shall be issued a  
25 registration certificate to engage in the business for which application is  
26 made unless the applicant at the time of making such application owes any  
27 tax, penalty or interest, and in such case, before a registration certificate is  
28 issued, the director of taxation shall require the applicant to pay the  
29 amount owed.

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

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

41 (d) The secretary may suspend or revoke the registration certificate of  
42 any taxpayer found in default for a period of at least 60 days in the  
43 payment of any tax or in the filing of any return. Prior to taking any action,

1 the secretary shall provide the taxpayer 30 days' notice of the time and  
2 place of a hearing to be conducted pursuant to the Kansas administrative  
3 procedure act to show cause why such registration certificate should not be  
4 suspended or revoked. A suspended or revoked registration certificate shall  
5 not be reinstated until all outstanding tax, penalty and interest liabilities  
6 are satisfied. A suspension or revocation pursuant to this subsection shall  
7 be applicable to any individual who is a responsible party for the  
8 collection or payment of tax as provided by law.

9 (e) It shall be unlawful for any person to engage in the business of  
10 selling goods at retail or furnishing taxable services in this state after such  
11 person's registration certificate has been suspended or revoked.

12 New Sec. 11. (a) Every person engaged in the business of selling  
13 goods at retail or furnishing services taxable in this state, shall keep  
14 records and books of all such sales, together with invoices, bills of lading,  
15 sales records, copies of bills of sale and other pertinent papers and  
16 documents. Such books and records and other papers and documents shall,  
17 at all times during business hours of the day, be available for and subject to  
18 inspection by the director, or the director's duly authorized agents and  
19 employees, for a period of three years from the last day of the calendar  
20 year or of the fiscal year of the retailer, whichever comes later, to which  
21 the records pertain. Such records shall be preserved during the entire  
22 period during which they are subject to inspection by the director, unless  
23 the director in writing previously authorizes their disposal. Any person  
24 selling goods or furnishing taxable services shall be prohibited from  
25 asserting that any sales are exempt from taxation unless the retailer has in  
26 the retailer's possession a properly executed exemption certificate provided  
27 by the consumer claiming the exemption, except as follows: (1) A retailer  
28 is relieved of liability for tax otherwise applicable if the retailer obtains a  
29 fully completed exemption certificate or captures the relevant data  
30 elements required by the director within 90 days subsequent to the date of  
31 the sale; or (2) if the retailer has not obtained an exemption certificate or  
32 all relevant data elements, the retailer, within 120 days subsequent to a  
33 request for substantiation by the director, either may obtain a fully  
34 completed exemption certificate from the purchaser, taken in good faith  
35 which meets the requirements specified in this subsection, or obtain other  
36 information establishing that the transaction was not subject to tax.  
37 Otherwise, the sales shall be deemed to be taxable sales under this act. The  
38 seller shall obtain an exemption certificate that claims an exemption that  
39 was authorized pursuant to Kansas law on the date of the transaction in the  
40 jurisdiction where the transaction is sourced pursuant to law, could be  
41 applicable to the item being purchased and is reasonable for the  
42 purchaser's type of business. If the seller obtains an exemption certificate  
43 or other information as described in this subsection, the seller is relieved of

1 any liability for the tax on the transaction unless it is discovered through  
2 the audit process that the seller had knowledge or had reason to know at  
3 the time such information was provided that the information relating to the  
4 exemption claimed was materially false or the seller otherwise knowingly  
5 participated in activity intended to purposefully evade the tax that is  
6 properly due on the transaction, and it must be established that the seller  
7 had knowledge or had reason to know at the time the information was  
8 provided that the information was materially false.

9 (b) The amount of tax imposed by this act is to be assessed within  
10 three years after the return is filed, and no proceedings in court for the  
11 collection of such taxes shall begin after the expiration of such period. In  
12 the case of a false or fraudulent return with intent to evade tax, the tax may  
13 be assessed or a proceeding in court for collection of such tax may begin at  
14 any time within two years from the discovery of such fraud. No  
15 assessment shall be made for any period preceding the date of registration  
16 of the retailer by more than three years except in cases of fraud. No refund  
17 or credit shall be allowed by the director after three years from the due  
18 date of the return for the reporting period unless before the expiration of  
19 such period a claim therefor is filed by the taxpayer. For all mailed returns,  
20 including refund claims, each return or refund claim shall be presumed to  
21 have been filed with the department on the postmark date of such return or  
22 refund claim or if such date is illegible, the date three days prior to the date  
23 such return or refund claim is received.

24 (c) Before the expiration of time prescribed in this section for the  
25 assessment of additional tax or the filing of a claim for refund, the director  
26 is hereby authorized to enter into an agreement in writing with the  
27 taxpayer consenting to the extension of the periods of limitations for the  
28 assessment of tax or for the filing of a claim for refund, at any time prior to  
29 the expiration of the period of limitations. The period so agreed upon may  
30 be extended by subsequent agreements in writing made before the  
31 expiration of the period previously agreed upon. In consideration of such  
32 agreement or agreements, interest due in excess of 48 months on any  
33 additional tax shall be waived.

34 (d) Interest at the rate prescribed by K.S.A. 79-2968, and  
35 amendments thereto, shall be allowed on any overpayment of tax  
36 computed from the filing date of the return claiming the refund, except that  
37 no interest shall be allowed on any such refund if the same is paid within  
38 120 days after the filing date of the return claiming the refund or the date  
39 of payment, whichever is later.

40 New Sec. 12. The director of taxation shall examine all returns filed  
41 under the provisions of this act, and shall issue final determinations of tax  
42 liability hereunder. Any determination may be made on the basis of a  
43 generally recognized valid and reliable sampling technique, whether or not

1 the person being audited has complete records of transactions and whether  
2 or not such person consents. In any such case, the director shall notify the  
3 taxpayer in writing of the sampling technique to be utilized, including the  
4 design and population of such sample. If the taxpayer demonstrates that  
5 any such technique used was not in accordance with generally recognized  
6 sampling techniques, the audit shall be dismissed with respect to that  
7 portion of the audit based upon such technique, and a new audit shall be  
8 performed. Within 60 days after the mailing of notice of the director's  
9 determination any taxpayer may request an informal conference with the  
10 secretary of revenue or the secretary's designee relating to such taxpayer's  
11 tax liability, including the issue of whether the use of a generally  
12 recognized sampling technique achieved a result that was reflective of the  
13 taxpayer's actual tax liability, and an informal conference thereon shall be  
14 conducted and the secretary of revenue or the secretary's designee shall  
15 make a final determination and give the taxpayer notice thereof. In case  
16 any person required by the provisions of this act to make a return fails or  
17 refuses to do so, the secretary of revenue or the secretary's designee, after  
18 notice to such person, shall make a final determination of the amount of  
19 such tax according to the best judgment and information of the secretary of  
20 revenue or the secretary's designee.

21 Whenever the director of taxation has reason to believe that a person  
22 liable for tax under any provisions of this act is about to depart from the  
23 state or to remove such person's property therefrom, or to conceal oneself  
24 or such person's property therein, or to do any other act tending to  
25 prejudice, jeopardize or render wholly or partly ineffectual the collection  
26 of such sales tax unless proceedings be brought without delay, the director  
27 shall immediately make an assessment for all sales taxes due from such  
28 taxpayer, noting such finding on the assessment. The assessment shall be  
29 made on the basis of emergency proceedings in accordance with the  
30 provisions of K.S.A. 77-536, and amendments thereto. Thereupon a  
31 warrant shall forthwith be issued for the collection of the tax as provided  
32 in K.S.A. 79-3235, and amendments thereto. The taxpayer may within 15  
33 days from the date of filing of such warrant request an informal conference  
34 with the secretary or the secretary's designee on the correctness of the  
35 jeopardy assessment.

36 New Sec. 13. For the purpose of ascertaining the correctness of any  
37 return, or for the purpose of determining the amount of tax due from any  
38 person engaged in the business of selling tangible personal property at  
39 retail, or furnishing services taxable hereunder, the director of taxation, or  
40 any officer or employee of the director of taxation designated, in writing,  
41 may hold investigations and hearings concerning any matters covered by  
42 this act, and may examine any books, papers, records, or memoranda  
43 bearing upon such sales of any such person, and may require the

1 attendance of such person or any officer or employee of such person, or of  
2 any person having knowledge of such sales, and may take testimony and  
3 require proof for its information. In the conduct of any investigation or  
4 hearing, neither the director nor any officer or employee thereof shall be  
5 bound by the technical rules of evidence, and no informality in any  
6 proceeding, or in the manner of taking testimony, shall invalidate any  
7 order or decision made or approved by the director. The director, or any  
8 officer or employee thereof, shall have power to administer oaths to such  
9 persons.

10 New Sec. 14. The tax imposed by this act shall be a lien upon the  
11 property of any person who shall sell such person's business consisting of  
12 tangible personal property. The person acquiring such business or property  
13 shall withhold a sufficient amount of the purchase price thereof to cover  
14 the amount of any taxes due and unpaid by the seller, until the seller shall  
15 furnish the purchaser with a receipt from the director of taxation, as herein  
16 provided, showing that such taxes have been paid. The purchaser shall be  
17 personally liable for the payment of any unpaid taxes of the seller, to the  
18 extent of the value of the property received by the purchaser, and if a  
19 receipt is not furnished by such seller within 20 days from the date of sale  
20 of such business, the purchaser shall remit the amount of such unpaid taxes  
21 to the director of taxation on or before the 20<sup>th</sup> day of the month  
22 succeeding that in which such person acquired such business or property.

23 New Sec. 15. All notices required to be mailed to the taxpayer under  
24 the provisions of this act, if mailed to such person at such person's last  
25 known address as shown on the records of the director of taxation, shall be  
26 sufficient for the purposes of this act.

27 New Sec. 16. Any information obtained by the department of revenue  
28 in connection with administration of this act is subject to the  
29 confidentiality provisions as set forth in K.S.A. 75-5133, and amendments  
30 thereto.

31 New Sec. 17. (a) If any taxpayer shall fail to pay the tax required  
32 under this act at the time required by or under the provisions of this act,  
33 there shall be added to the unpaid balance of the tax, interest at the rate per  
34 month prescribed by subsection (a) of K.S.A. 79-2968, and amendments  
35 thereto from the date the tax was due until paid.

36 (b) If any taxpayer fails to file a return or pay the tax if one is due, at  
37 the time required by or under the provisions of this act, there shall be  
38 added to the tax an additional amount equal to 1% of the unpaid balance of  
39 the tax due for each month or fraction thereof during which such failure  
40 continues, not exceeding 24% in the aggregate, plus interest at the rate  
41 prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto,  
42 from the date the tax was due until paid. Notwithstanding the foregoing, in  
43 the event an assessment is issued following a field audit for any period for



1 which a return was filed by the taxpayer and all of the tax was paid  
2 pursuant to such return, a penalty shall be imposed for the period included  
3 in the assessment in an amount of 1% per month not exceeding 10% of the  
4 unpaid balance of tax due shown in the notice of assessment. If after  
5 review of a return for any period included in the assessment, the secretary  
6 or secretary's designee determines that the underpayment of tax was due to  
7 the failure of the taxpayer to make a reasonable attempt to comply with the  
8 provisions of this act, such penalty shall be imposed for the period  
9 included in the assessment in the amount of 25% of the unpaid balance of  
10 tax due.

11 (c) If any taxpayer, with fraudulent intent, fails to pay any tax or  
12 make, render or sign any return, or to supply any information, within the  
13 time required by or under the provisions of this act, there shall be added to  
14 the tax a penalty in an amount equal to 50% of the unpaid balance of tax  
15 due.

16 (d) Penalty or interest applied under the provisions of subsections (a)  
17 and (b) shall be in addition to the penalty added under any other provisions  
18 of this section.

19 (e) Whenever the secretary or the secretary's designee determines that  
20 the failure of the taxpayer to comply with the provisions of subsections (a)  
21 and (b) was due to reasonable causes, the secretary or the secretary's  
22 designee may waive or reduce any of the penalties and may reduce the  
23 interest rate to the underpayment rate prescribed and determined for the  
24 applicable period under section 6621 of the federal internal revenue code  
25 upon making a record of the reasons therefor.

26 (f) In addition to all other penalties provided by this section, any  
27 person who willfully fails to make a return or to pay any tax imposed  
28 under this act, or who makes a false or fraudulent return, or fails to keep  
29 any books or records prescribed by this act, or who willfully violates any  
30 rule and regulation of the secretary of revenue, for the enforcement and  
31 administration of this act, or who aids and abets another in attempting to  
32 evade the payment of any tax imposed by this act, or who violates any  
33 other provision of this act, shall, upon conviction thereof, be fined not less  
34 than \$500, nor more than \$10,000, or be imprisoned in the county jail not  
35 less than one month, nor more than six months, or be both so fined and  
36 imprisoned, in the discretion of the court.

37 (g) No penalty assessed hereunder shall be collected if the taxpayer  
38 has had the tax abated on appeal, and any penalty collected upon such tax  
39 shall be refunded.

40 (h) A person applying to the department for a refund of any tax  
41 imposed under this act that was not previously collected by the retailer, or  
42 that the retailer has already refunded to such person, shall be subject to a  
43 penalty of 50% of the amount of any such tax sought to be refunded. No

1 such penalty shall be imposed against such person if the retailer collected  
2 the tax but did not remit such tax to the department.

3 New Sec. 18. Whenever any taxpayer liable to pay any tax, refuses or  
4 neglects to pay the tax, the amount, including any interest or penalty, shall  
5 be collected in the following manner. The secretary of revenue or the  
6 secretary's designee shall issue a warrant under the hand of the secretary or  
7 the secretary's designee and official seal directed to the sheriff of any  
8 county of the state commanding the sheriff to levy upon and sell the real  
9 and personal property of the taxpayer found within the sheriff's county to  
10 satisfy the tax, including penalty and interest, and the cost of executing the  
11 warrant and to return such warrant to the secretary or the secretary's  
12 designee and pay to the secretary or the secretary's designee the money  
13 collected by virtue thereof not more than 90 days from the date of the  
14 warrant. Firearms seized may be appraised and disposed of in the same  
15 manner prescribed in K.S.A. 79-5212, and amendments thereto. The  
16 sheriff shall, within five days, after the receipt of the warrant file with the  
17 clerk of the district court of the county a copy thereof, and thereupon the  
18 clerk shall either enter in the appearance docket the name of the taxpayer  
19 mentioned in the warrant, the amount of the tax or portion of it, interest  
20 and penalties for which the warrant is issued and the date such copy is  
21 filed and note the taxpayer's name in the general index. No fee shall be  
22 charged for either such entry. The amount of such warrant so docketed  
23 shall thereupon become a lien upon the title to, and interest in, the real  
24 property of the taxpayer against whom it is issued. The sheriff shall  
25 proceed in the same manner and with the same effect as prescribed by law  
26 with respect to executions issued against property upon judgments of a  
27 court of record, and shall be entitled to the same fees for services.

28 The court in which the warrant is docketed shall have jurisdiction over  
29 all subsequent proceedings as fully as though a judgment had been  
30 rendered in the court. A warrant of similar terms, force and effect may be  
31 issued by the secretary or the secretary's designee and directed to any  
32 officer or employee of the secretary or the secretary's designee, and in the  
33 execution thereof such officer or employee shall have all the powers  
34 conferred by law upon sheriffs with respect to executions issued against  
35 property upon judgments of a court of record and the subsequent  
36 proceedings thereunder shall be the same as provided where the warrant is  
37 issued directly to the sheriff. The taxpayer shall have the right to redeem  
38 the real estate within a period of 18 months from the date of such sale. If a  
39 warrant is returned, unsatisfied in full, the secretary or the secretary's  
40 designee shall have the same remedies to enforce the claim for taxes as if  
41 the state of Kansas had recovered judgment against the taxpayer for the  
42 amount of the tax. No law exempting any goods and chattels, land and  
43 tenements from forced sale under execution shall apply to a levy and sale

1 under any of the warrants or upon any execution issued upon any  
2 judgment rendered in any action for sales or compensating taxes. Except  
3 as provided further, the secretary or the secretary's designee shall have the  
4 right after a warrant has been returned unsatisfied, or satisfied only in part,  
5 to issue alias warrants until the full amount of the tax is collected. No costs  
6 incurred by the sheriff or the clerk of the court shall be charged to the  
7 secretary or the secretary's designee.

8 If execution is not issued within 10 years from the date of the docketing  
9 of any such warrant, or if 10 years shall have intervened between the date  
10 of the last execution issued on such warrant, and the time of issuing  
11 another writ of execution thereon, such warrant shall become dormant, and  
12 shall cease to operate as a lien on the real estate of the delinquent taxpayer.  
13 Such dormant warrant may be revived in like manner as dormant  
14 judgments under the code of civil procedure.

15 New Sec. 19. (a) The secretary of revenue or the secretary's designee  
16 shall administer and enforce this act. The secretary shall adopt rules and  
17 regulations for the administration of this act. The secretary or the  
18 secretary's designee may upon application of any taxpayer give such  
19 applicant the privilege of paying the tax levied by this act upon the basis of  
20 gross receipts accrued but not received provided such applicant's books are  
21 regularly kept on such basis. The secretary or the secretary's designee shall  
22 appoint agents and employees for the enforcement and administration of  
23 this act.

24 (b) The secretary of revenue or the secretary's designee may abate all  
25 or part of any tax liabilities under this act as provided by the secretary.

26 New Sec. 20. (a) For the purposes of more efficiently securing the  
27 payment, collection and accounting for the taxes provided for under this  
28 act, agreements between competing retailers or the adoption of appropriate  
29 rules and regulations by organizations or associations of retailers to  
30 provide uniform methods for adding and collecting the full amount of the  
31 tax imposed by this act, or an amount equal as nearly as possible or  
32 practicable to the average equivalent thereof, and which do not involve  
33 price-fixing agreements otherwise unlawful, and which shall first have the  
34 approval of the director of taxation, are expressly authorized and shall be  
35 held not to be in violation of any antitrust laws of this state. It shall be the  
36 duty of the director of taxation to cooperate with such retailers,  
37 organizations, or associations in formulating such agreements, rules and  
38 regulations. The secretary of revenue shall adopt rules and regulations for  
39 adding and collecting such tax, or an amount equal as nearly as possible or  
40 practicable to the average equivalent thereof, by providing different  
41 methods applying uniformly to retailers within the same general  
42 classification for the purpose of enabling such retailers to add and collect,  
43 as far as practicable, the amount of such tax.

1 (b) The secretary of revenue may adopt rules and regulations to  
2 provide for the issuance of permits to certain businesses which grant direct  
3 payment authority that allows certain purchases to be made without the  
4 payment of tax to the vendor or service provider and requires the permit  
5 holder to self-accrue any tax that is due and pay such tax directly to the  
6 department of revenue. The secretary shall be accorded broad discretion in  
7 establishing qualification standards for direct pay authority, in entering  
8 into agreement with permit holders that fix accounting and reporting  
9 requirements, in granting and canceling the direct pay privilege, and in  
10 establishing other requirements for administration of this section.

11 New Sec. 21. (a) All revenue collected or received by the director of  
12 taxation from the taxes imposed by this act shall be remitted to the state  
13 treasurer in accordance with the provisions of K.S.A. 75-4215, and  
14 amendments thereto. Upon receipt of each such remittance, the state  
15 treasurer shall deposit the entire amount in the state treasury, less amounts  
16 withheld as provided in subsection (b) and amounts credited as provided in  
17 subsection (c), (d) and (e), to the credit of the state general fund.

18 (b) A refund fund, designated as "consumption tax refund fund" not  
19 to exceed \$100,000 shall be set apart and maintained by the director from  
20 sales tax collections and estimated tax collections and held by the state  
21 treasurer for prompt payment of all consumption tax refunds including  
22 refunds authorized under the provisions of K.S.A. 79-3635, and  
23 amendments thereto. Such fund shall be in such amount, within the limit  
24 set by this section, as the director shall determine is necessary to meet  
25 current refunding requirements under this act. In the event such fund as  
26 established by this section is, at any time, insufficient to provide for the  
27 payment of refunds due claimants thereof, the director shall certify the  
28 amount of additional funds required to the director of accounts and reports  
29 who shall promptly transfer the required amount from the state general  
30 fund to the consumption tax refund fund, and notify the state treasurer,  
31 who shall make proper entry in the records.

32 (c) On January 1, 2014, the state treasurer shall credit 11.233% of the  
33 revenue collected and received from the tax imposed by this act, at the rate  
34 of 5.7%, and deposited as provided by subsection (a), exclusive of  
35 amounts credited pursuant to subsection (d), in the state highway fund.

36 (d) The state treasurer shall credit all revenue collected or received  
37 from the tax imposed by this act, as certified by the director, from  
38 taxpayers doing business within that portion of a STAR bond project  
39 district occupied by a STAR bond project or taxpayers doing business with  
40 such entity financed by a STAR bond project as defined in K.S.A. 2011  
41 Supp. 12-17,162, and amendments thereto, that was determined by the  
42 secretary of commerce to be of statewide as well as local importance or  
43 will create a major tourism area for the state or the project was designated

1 as a STAR bond project as defined in K.S.A. 2011 Supp. 12-17,162, and  
2 amendments thereto, to the city bond finance fund, which fund is hereby  
3 created. The provisions of this subsection shall expire when the total of all  
4 amounts credited hereunder and under subsection (d) of K.S.A. 79-3710,  
5 and amendments thereto, is sufficient to retire the special obligation bonds  
6 issued for the purpose of financing all or a portion of the costs of such  
7 STAR bond project.

8 (e) All revenue certified by the director of taxation as having been  
9 collected or received from the tax imposed on the sale or furnishing of gas,  
10 water, electricity and heat for use or consumption within the intermodal  
11 facility district described in this subsection, shall be credited by the state  
12 treasurer to the state highway fund. Such revenue may be transferred by  
13 the secretary of transportation to the rail service improvement fund  
14 pursuant to law. The provisions of this subsection shall take effect upon  
15 certification by the secretary of transportation that a notice to proceed has  
16 been received for the construction of the improvements within the  
17 intermodal facility district, but not later than December 31, 2010, and shall  
18 expire when the secretary of revenue determines that the total of all  
19 amounts credited hereunder and pursuant to subsection (e) of K.S.A. 79-  
20 3710, and amendments thereto, is equal to \$53,300,000, but not later than  
21 December 31, 2045. Thereafter, all revenues shall be collected and  
22 distributed in accordance with applicable law. For all tax reporting periods  
23 during which the provisions of this subsection are in effect, none of the  
24 exemptions contained in section 4, and amendments thereto, shall apply to  
25 the sale or furnishing of any gas, water, electricity and heat for use or  
26 consumption within the intermodal facility district. As used in this  
27 subsection, "intermodal facility district" shall consist of an intermodal  
28 transportation area as defined by subsection (oo) of K.S.A. 12-1770a, and  
29 amendments thereto, located in Johnson county within the polygonal-  
30 shaped area having Waverly Road as the eastern boundary, 191<sup>st</sup> Street as  
31 the southern boundary, Four Corners Road as the western boundary, and  
32 Highway 56 as the northern boundary, and the polygonal-shaped area  
33 having Poplar Road as the eastern boundary, 183<sup>rd</sup> Street as the southern  
34 boundary, Waverly Road as the western boundary, and the BNSF mainline  
35 track as the northern boundary, that includes capital investment in an  
36 amount exceeding \$150 million for the construction of an intermodal  
37 facility to handle the transfer, storage and distribution of freight through  
38 railway and trucking operations.

39 New Sec. 22. (a) For the purpose of the proper administration of this  
40 act and to prevent evasion of the tax imposed thereunder, it shall be  
41 presumed that all gross receipts from the sale of tangible personal property  
42 or enumerated services are subject to tax until the contrary is established.  
43 The burden of proving that a sale is not subject to tax is upon the seller

1 unless the seller takes from the purchaser an exemption certificate to the  
2 effect that the property or service purchased is not subject to tax.

3 (b) An exemption certificate shall relieve the seller from collecting  
4 and remitting tax if the seller has obtained the required identifying  
5 information as determined by the director, from the purchaser and the  
6 reason for claiming the exemption at the time of purchase and has  
7 maintained proper records of exempt transactions pursuant to subsection  
8 (a) of section 11, and amendments thereto, and provided them to the  
9 director when requested, except that no such relief from liability shall  
10 apply to a seller who: Fraudulently fails to collect the tax; solicits  
11 purchasers to participate in the unlawful claim of an exemption; accepts an  
12 exemption certificate claiming an entity based exemption when the subject  
13 of the transaction is actually received by the purchaser at a location  
14 operated by the seller and the director provides an exemption certificate  
15 that clearly and affirmatively indicates that the claimed exemption is not  
16 available. The seller shall obtain the same information for proof of a  
17 claimed exemption regardless of the medium in which the transaction  
18 occurred. The purchaser improperly claiming an exemption shall remain  
19 liable for the nonpayment of tax.

20 (c) The exemption certificate shall be substantially in such form as  
21 the director may prescribe. The seller shall use the standard form for  
22 claiming an exemption electronically as adopted by the director. A seller  
23 may require a purchaser to provide a copy of the purchaser's tax  
24 registration certificate with a resale certificate as a condition for honoring  
25 the purchaser's resale exemption claim, except that in the case of drop  
26 shipment sales into this state, the third party vendor may claim a resale  
27 exemption based on an exemption certificate provided by its customer, re-  
28 seller, or any other information acceptable to the secretary available to the  
29 third party vendor evidencing qualification for a resale exemption,  
30 regardless of whether the customer, re-seller, is registered to collect and  
31 remit sales and use tax in this state. A purchaser is not required to provide  
32 a signature to claim an exemption from tax unless a paper exemption  
33 certificate is used. A seller is relieved of liability for the tax otherwise  
34 applicable if it obtains a blanket exemption certificate for a purchaser with  
35 which the seller has a recurring business relationship. Such blanket  
36 certificate need not be renewed or updated by the seller for exemption  
37 certificate information or data elements when there is a recurring business  
38 relationship between the buyer and seller. For purposes of this subsection,  
39 a recurring business relationship exists when a period of no more than 12  
40 months elapses between sales transactions.

41 (d) To lawfully present a resale exemption certificate the purchaser  
42 must be engaged in the business of selling property or services of the same  
43 kind that is purchased, hold a registration certificate, except as otherwise

1 permitted in subsection (c) for drop shipment sales into this state, and at  
2 the time of purchase, either intend to resell the property in the regular  
3 course of business or be unable to ascertain whether the property will be  
4 resold or used for some other purpose. A resale exemption certificate may  
5 be used for resale of services to tangible personal property and not for  
6 services to real property.

7 (e) Any person who issues a resale certificate or other exemption  
8 certificate in order to unlawfully avoid payment of tax for business or  
9 personal gain shall be guilty of a misdemeanor and upon conviction shall  
10 be punished by a fine of not more than \$1,000 or imprisonment for not  
11 more than one year, or by both. In addition, if the director determines that  
12 a person issued a resale certificate in order to unlawfully avoid payment of  
13 tax for business or personal gain, the director shall increase any penalty  
14 that is due from the person under section 17, and amendments thereto, by  
15 \$250 or 10 times the tax due, whichever is greater, on each transaction  
16 where the misuse of a resale certificate occurred.

17 (f) Exemption certificates issued by an entity claiming a specific  
18 exemption under section 6, and amendments thereto, based on the status of  
19 the entity shall bear the name, address of the entity and identification  
20 number issued to the entity pursuant to K.S.A. 2011 Supp. 79-3692, and  
21 amendments thereto. Such certificate shall be signed by an authorized  
22 person of the nonprofit entity, if in paper form, and contain the tax  
23 identification number of the entity. The certificate shall be substantially in  
24 such form as the director may prescribe. A seller may require that  
25 payments be made on an exempt entity's check, warrant, voucher or  
26 charged to the entity's account as a condition for honoring the entity's  
27 exemption claim.

28 (g) It shall be the duty of every person who purchases tangible  
29 personal property or services that are taxable under this act to pay the full  
30 amount of tax that is lawfully due to the retailer making the sale. Any  
31 person who willfully and intentionally refuses to pay such tax to the  
32 retailer shall be guilty of a misdemeanor and upon conviction shall be  
33 punished and fined as provided by subsection (g) of section 17, and  
34 amendments thereto.

35 New Sec. 23. (a) A refund request for an amount equal to or  
36 exceeding \$50 may be filed directly by a consumer or purchaser if the  
37 consumer or purchaser: (1) Paid the tax directly to the department; (2)  
38 provides evidence that the retailer refused or was unavailable to refund the  
39 tax; (3) provides evidence that the retailer did not act upon its refund  
40 request in a timely manner as provided in subsection (b); or (4) provides a  
41 notarized statement to the department from the retailer that the retailer: (A)  
42 Will not claim a refund of the same tax included in the purchaser's or  
43 consumer's refund request; (B) agrees to provide to the consumer or

1 purchaser any information or documentation in the retailer's possession  
2 needed for submission to the department to support or prove the refund  
3 claim; (C) has remitted to the state the tax sought to be refunded; and (D)  
4 has not taken or will not take a credit for such tax. A retailer providing  
5 false information in any such statement shall be subject to penalties  
6 prescribed by section 17, and amendments thereto.

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

22 New Sec. 24. (a) Any individual who is responsible for collection or  
23 payment of tax or control, receipt, custody or disposal of funds due and  
24 owing under this act who willfully fails to collect such tax, or account for  
25 and pay over such tax, or attempts in any manner to evade or defeat such  
26 tax or the payment thereof shall be personally liable for the total amount of  
27 the tax evaded, or not collected, or not accounted for and paid over,  
28 together with any interest and penalty imposed thereon. The provisions of  
29 this section shall apply regardless of the: (1) Relationship with the retailer  
30 held by such individual; (2) form under which the retailer conducts  
31 business, whether a sole proprietorship, partnership or corporation; or (3)  
32 dissolution of the business. As used in this section, "willfully" has the  
33 same meaning as such term has for federal tax purposes in 26 U.S.C. §  
34 6672.

35 (b) A notice of assessment issued to a responsible individual shall be  
36 considered to be a proceeding for the collection of the tax liability of the  
37 business. If the liability of the business is determined in a proceeding that  
38 has become final, any notice of assessment against a responsible individual  
39 must be issued within three years after the proceeding against the business  
40 has become final.

41 (c) Within 60 days after the mailing of a notice of assessment against  
42 a responsible individual, the person assessed may request an informal  
43 conference with the secretary of revenue under K.S.A. 79-3226, and



1 amendments thereto, for a determination of whether such person is a  
2 responsible individual under subsection (a) and for a determination of the  
3 tax liability of the business.

4 (d) If notice of assessment and warrant are issued to a responsible  
5 individual pursuant to section 12, and amendments thereto, or any other  
6 jeopardy provision of chapter 79 of the Kansas Statutes Annotated, and  
7 amendments thereto, the person assessed may request that the informal  
8 conference held pursuant to subsection (c) be expedited. When such a  
9 request is made, the secretary shall schedule the conference to be held  
10 within 21 days after receipt of the request and shall issue a written final  
11 determination within 21 days after the close of the conference.

12 New Sec. 25. The provisions of K.S.A. 79-3667 *et seq.*, and  
13 amendments thereto, shall be applicable to this act.

14 New Sec. 26. (a) There is hereby created a consumption tax transition  
15 committee. Such committee shall provide recommendations for necessary  
16 procedures, administrative processes and legislation to effectuate the  
17 implementation of this act.

18 (b) Members of the transition committee shall consist of:

19 (1) One member of the committee on taxation of the house of  
20 representatives appointed by the speaker of the house of representatives;

21 (2) one member of the committee on assessment and taxation of the  
22 senate appointed by the president of the senate;

23 (3) one member of the committee on appropriations of the house of  
24 representatives appointed by the speaker of the house of representatives;

25 (4) one member of the committee on ways and means of the senate  
26 appointed by the president of the senate;

27 (5) the secretary of revenue;

28 (6) the state treasurer; and

29 (7) the secretary of state.

30 (c) The committee shall select a chairperson.

31 (d) The committee shall make a report of such recommendations  
32 including any necessary legislation to effectuate such recommendations to  
33 the legislature prior to January 1, 2013.

34 New Sec. 27. (a) If any person sells or leases tangible personal  
35 property to the state, a state department, a state agency or an agent thereof,  
36 that person and any affiliated person shall, as a prerequisite for any such  
37 sale or lease, register with the department of revenue as a retailer and  
38 comply with all legal requirements imposed on a retailer, including the  
39 requirement to collect and remit tax on all taxable sales of tangible  
40 personal property to customers in this state.

41 (b) Any ruling, agreement or contract, whether written or oral,  
42 express or implied, between a retailer and this state's executive branch, or  
43 any other state agency or department, stating, agreeing or ruling that the

1 retailer is not required to collect tax in this state despite the presence of a  
2 warehouse, distribution center or fulfillment center in the state that is  
3 owned or operated by the retailer or an affiliated person of the retailer shall  
4 be null and void unless it is specifically approved by a majority vote of  
5 each of the houses of the Kansas legislature.

6 (c) As used in this section, "affiliated person" means any person that  
7 is a member of the same "controlled group of corporations" as defined in  
8 section 1563(a) of the federal internal revenue code as the retailer or any  
9 other entity that, notwithstanding its form of organization, bears the same  
10 ownership relationship to the retailer as a corporation that is a member of  
11 the same "controlled group of corporations" as defined in section 1563(a)  
12 of the federal internal revenue code.

13 Sec. 28. K.S.A. 2011 Supp. 79-3702 is hereby amended to read as  
14 follows: 79-3702. For the purposes of this act: (a) "Purchase price" means  
15 the consideration paid or given or contracted to be paid or given by any  
16 person to the seller of an article of tangible personal property for the article  
17 purchased. The term shall include, in addition to the consideration paid or  
18 given or contracted to be paid or given, the actual cost of transportation  
19 from the place where the article was purchased to the person using the  
20 same in this state. If a cash discount is allowed and taken on the sale it  
21 shall be deducted in arriving at the purchase price.

22 (b) The meaning ascribed to words and phrases in K.S.A. 79-3602,  
23 and amendments thereto, insofar as is practicable, shall be applicable  
24 herein unless otherwise provided. The provisions of K.S.A. 79-3601 to 79-  
25 3625, inclusive *et seq.*, 79-3650, K.S.A. 2011 Supp. 79-3693 and 79-3694,  
26 and amendments thereto, relating to enforcement, collection and  
27 administration, insofar as practicable, shall have full force and effect with  
28 respect to taxes imposed under the provisions of this act.

29 (c) "Use" means the exercise within this state by any person of any  
30 right or power over tangible personal property incident to the ownership of  
31 that property, except that it shall not include processing, or the sale of the  
32 property in the regular course of business, and except storage as  
33 hereinafter defined.

34 (d) "Storage" means any keeping or retaining in this state for any  
35 purpose except sale in the regular course of business or subsequent use  
36 solely outside this state of tangible personal property purchased from a  
37 retailer.

38 (e) "Storage" and "use" do not include the keeping, retaining or  
39 exercising of any right or power over tangible personal property shipped or  
40 brought into this state for the purpose of subsequently transporting it  
41 outside the state for use thereafter solely outside the state, or for the  
42 purpose of being processed, fabricated, or manufactured into, attached to  
43 or incorporated into, other tangible personal property to be transported

1 outside the state and thereafter used solely outside the state.

2 (f) "Property used in processing" means: (1) Any tangible personal  
3 property which, when used in fabrication, compounding, manufacturing or  
4 germination, becomes an integral part of the new article resulting from  
5 such fabrication, compounding, manufacturing, or germination, and  
6 intended to be sold ultimately at retail; (2) fuel which is consumed in  
7 creating power, heat, or steam for processing or for generating electric  
8 current.

9 (g) "Retailer" means every person engaged in the business of selling  
10 tangible personal property for use within the meaning of this act, except  
11 that, when in the opinion of the director it is necessary for the efficient  
12 administration of this act to regard any salesperson, representatives,  
13 truckers, peddlers or canvassers as the agents of the dealers, distributors,  
14 supervisors, employers or persons under whom they operate or from whom  
15 they obtain the tangible personal property sold by them, irrespective of  
16 whether they are making sales on their own behalf or on behalf of such  
17 dealers, distributors, supervisors, employers, or persons, the director may  
18 so regard them and may regard the dealers, distributors, supervisors,  
19 employers, or persons as retailers for the purposes of this act.

20 (h) (1) "Retailer doing business in this state" or any like term, means:  
21 (A) Any retailer having or maintaining in this state, permanently,  
22 temporarily, directly or indirectly through a subsidiary, agent or  
23 representative, an office, distribution house, sales house, warehouse or  
24 other place of business;

25 (B) any retailer having an employee, independent contractor, agent,  
26 representative, salesperson, canvasser or solicitor operating in this state  
27 either permanently or temporarily, under the authority of the retailer or its  
28 subsidiary, for the purpose of selling, delivering, installing, assembling,  
29 servicing, repairing, soliciting sales or the taking of orders for tangible  
30 personal property;

31 (C) any retailer, including a contractor, repair person or other service  
32 provider, who enters this state to perform services that are enumerated in  
33 K.S.A. 79-3603, and amendments thereto, and who is required to secure a  
34 retailer's sales tax registration certificate before performing those services;

35 (D) any retailer deriving rental receipts from a lease of tangible  
36 personal property situated in this state;

37 (E) any person having a franchisee or licensee operating under its  
38 trade name if the franchisee or the licensee is required to collect the tax  
39 under the Kansas retailers' sales tax act;

40 (F) any person regularly maintaining a stock of tangible personal  
41 property in this state for sale in the normal course of business; and

42 (G) any retailer who has any other contact with this state that would  
43 allow this state to require the retailer to collect and remit tax under the

1 provisions of the constitution and laws of the United States.

2 (2) A retailer shall be presumed to be doing business in this state if:

3 (A) Both of the following conditions exist:

4 (i) The retailer holds a substantial ownership interest in, or is owned  
5 in whole substantial part by, a retailer maintaining a sales location in  
6 Kansas; and

7 (ii) the retailer sells the same or a substantially similar line of  
8 products as the related Kansas retailer and does so under the same or a  
9 substantially similar business name, or the Kansas facilities or Kansas  
10 employees of the related Kansas retailer are used to advertise, promote or  
11 facilitate sales by the retailer to consumers.

12 (B) The retailer holds a substantial ownership interest in, or is owned  
13 in whole or in substantial part by, a business that maintains a distribution  
14 house, sales house, warehouse or similar place of business in Kansas that  
15 delivers *or facilitates the delivery of* property sold by the retailer to  
16 consumers.

17 (C) For purposes of paragraphs (A) and (B):

18 (i) "Substantial ownership interest" means an interest in an entity that  
19 is not less than the degree of ownership of equity interest in an entity that  
20 is specified by Section 78p of Title 15 of the United States Code, or any  
21 successor to that statute, with respect to a person other than a director or  
22 officer; and

23 (ii) "ownership" means and includes both direct ownership, and  
24 indirect ownership through a parent, subsidiary or affiliate.

25 (D) *The retailer enters into an agreement with one or more residents*  
26 *of this state under which the resident, for a commission or other*  
27 *consideration, directly or indirectly refers potential customers, whether by*  
28 *a link on an internet website, by telemarketing, by an in-person oral*  
29 *presentation, or otherwise, to the retailer; if the cumulative gross receipts*  
30 *from sales by the retailer to customers in the state who are referred to the*  
31 *retailer by all residents with this type of an agreement with the retailer is*  
32 *in excess of \$10,000 during the preceding 12 months. This presumption*  
33 *may be rebutted by submitting proof that the residents with whom the*  
34 *retailer has an agreement did not engage in any activity within the state*  
35 *that was significantly associated with the retailer's ability to establish or*  
36 *maintain the retailer's market in the state during the preceding 12 months.*  
37 *Such proof may consist of sworn written statements from all of the*  
38 *residents with whom the retailer has an agreement stating that they did not*  
39 *engage in any solicitation in the state on behalf of the retailer during the*  
40 *preceding year; provided that such statements were provided and obtained*  
41 *in good faith. This subparagraph shall take effect 90 days after the*  
42 *enactment of this statute and shall apply to sales made and uses occurring*  
43 *on or after the effective date of this subparagraph and without regard to*

1 *the date the retailer and the resident entered into the agreement described*  
2 *in this subparagraph. The term "preceding 12 months" as used in this*  
3 *subparagraph includes the 12 months commencing prior to the effective*  
4 *date of this subparagraph.*

5 (3) The processing of orders electronically, by fax, telephone, the  
6 internet or other electronic ordering process, does not relieve a retailer of  
7 responsibility for collection of the tax from the purchaser if the retailer is  
8 doing business in this state pursuant to this section.

9 (i) "Director" means the director of taxation.

10 Sec. 29. K.S.A. 79-3294, 79-3294a and 79-3294b and K.S.A. 2011  
11 Supp. 79-1107, 79-1108, 79-3295, 79-3296, 79-3298, 79-3299, 79-32,100,  
12 79-32,100a, 79-32,100b, 79-32,100c, 79-32,100d, 79-32,100e, 79-32,110,  
13 79-3603 and 79-3702 are hereby repealed.

14 Sec. 30. This act shall take effect and be in force from and after  
15 January 1, 2014 and its publication in the statute book.

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