

HOUSE BILL No. 2762

By Committee on Taxation

3-1

1 AN ACT concerning taxation; relating to mechanical amusement devices,
2 tax stamps; sales tax exemptions; amending K.S.A. 2017 Supp. 79-
3 3603 and repealing the existing section.

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

6 New Section 1. Sections 1 through 10, and amendments thereto, may
7 be cited as the Kansas mechanical amusement device tax act.

8 New Sec. 2. As used in section 1 et seq., and amendments thereto:

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

10 (b) "Distributor" means any person who sells, leases or delivers
11 possession or custody of a mechanical amusement device to operators for a
12 consideration either directly or indirectly received.

13 (c) "Mechanical amusement device" means any machine that, upon
14 insertion of a coin, currency, credit card or substitute into the machine,
15 operates or may be operated or used for a game, contest or amusement of
16 any description, such as, by way of example, but not by way of limitation,
17 pinball games, shuffleboard, bowling games, radio-ray rifle games,
18 baseball, football, racing, boxing games, coin-operated musical devices
19 and coin-operated pool tables. The term does not mean vending machines
20 that disperse tangible personal property, devices located in private homes
21 for private use, lottery machines or electronic gaming machines as defined
22 by K.S.A. 74-8702, and amendments thereto, or devices that are
23 mechanically constructed in a manner that would render their operation
24 illegal under the laws of the state of Kansas.

25 (d) "Operator" means any person who operates a place of business in
26 which a mechanical amusement device owned by such person is physically
27 located or any person who places and who either directly or indirectly
28 controls or manages any mechanical amusement device.

29 (e) "Person" means any individual, partnership, society, association,
30 joint-stock company, corporation, estate, receiver, trustee, assignee, referee
31 or any other person acting in a fiduciary or representative capacity,
32 whether appointed by a court or otherwise, or any combination of
33 individuals.

34 New Sec. 3. (a) Beginning on January 1, 2019, an operator shall
35 obtain an annual license from the director, as provided by this act,
36 permitting such person to operate mechanical amusement devices in the

1 state of Kansas. Licenses shall be issued by the director upon application
2 for the license made on forms furnished by the director containing such
3 information as the director may require, subscribed to by the applicant or
4 the applicant's authorized designee. The application for a license under this
5 section shall be filed on or before January 1 of each year, and no license
6 fee shall be required.

7 (b) An application for a license may be refused to: (1) A person who
8 is not of good character and reputation in the community in which the
9 applicant resides; (2) a person who has been convicted of a felony under
10 the laws of any state or the United States; or (3) a person who has been
11 convicted of being the proprietor of a gambling house, or of any other
12 crime or misdemeanor opposed to decency and morality under the laws of
13 any state or the United States. If the applicant for a license under this
14 section is a corporation whose majority of stockholders could not obtain a
15 license, then such corporation shall not be issued a license. If the applicant
16 is an individual, the application shall include the applicant's social security
17 number.

18 (c) Procuring a license shall constitute sufficient contact with this
19 state for the exercise of personal jurisdiction over such person in any
20 action arising out of the operation of mechanical amusement devices in
21 this state.

22 New Sec. 4. Beginning on January 1, 2019, a distributor shall obtain
23 an annual license from the director permitting such person to sell, lease or
24 deliver possession or custody of a mechanical amusement device within
25 the state of Kansas. Licenses shall be issued by the director upon
26 application for the license made on forms furnished by the director
27 containing such information as the director may require, subscribed to by
28 the applicant or the applicant's authorized designee. Licenses shall be
29 issued in the same manner and be subject to the same limitations as an
30 operator's license issued under section 3, and amendments thereto.

31 New Sec. 5. (a) Beginning on January 1, 2019, there is hereby
32 imposed a tax upon all mechanical amusement devices operated within the
33 state of Kansas for profit or gain, either directly or indirectly received,
34 during all of the taxable year. Such tax shall be paid by the operator of the
35 mechanical amusement device. The tax shall be paid to the director and
36 shall be due and payable on January 1 of each year on each mechanical
37 amusement device in operation on that date, except that it shall be
38 unlawful to pay any such tax unless the sales or use tax has been paid on
39 the purchase of such device. For every machine or device put into
40 operation on a date subsequent to January 1 and that has not been included
41 in computing the tax imposed and levied by this act, the tax shall be due
42 and payable prior to the time the mechanical amusement device is placed
43 in operation.

1 (b) The rate of such tax levied by this section shall be \$35 for each
2 mechanical amusement device for any period beginning on or after
3 January 1, 2019, except that for devices placed in operation after July 1,
4 and before January 1 of each year, the tax shall be \$20 for each device.

5 (c) The director shall remit all moneys received under this subsection
6 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
7 and amendments thereto. Upon receipt of each such remittance, the state
8 treasurer shall deposit the entire amount in the state treasury to the credit
9 of the state general fund.

10 New Sec. 6. The tax levied and imposed by section 5, and
11 amendments thereto, shall be in addition to any and all taxes or fees of any
12 form whatsoever now imposed by the state of Kansas or any of its
13 subdivisions upon the business of operating or distributing mechanical
14 amusement devices as defined by section 2, and amendments thereto.
15 Nonpayment of the taxes or fees due and owing on or before the licensing
16 date of each year shall render the exemption provided by K.S.A. 79-
17 3603(f), and amendments thereto, inapplicable and the particular machines
18 or devices shall then be subject to all the provisions of the Kansas retailers'
19 sales tax act, including any penalty provisions pertaining to the owner or
20 operator of such machines or devices.

21 New Sec. 7. The payment of the tax imposed by this act shall be
22 evidenced by indicia of tax payment, as designed by the director, affixed to
23 each mechanical amusement device. The director shall adopt a uniform
24 system of affixing and displaying such evidence of tax payment.

25 New Sec. 8. (a) Any person who places a mechanical amusement
26 device in operation in the state of Kansas without the necessary indicia of
27 tax payment being placed conspicuously upon it or without having
28 obtained the necessary license shall be subject to an administrative penalty
29 of \$75 for each violation.

30 (b) Any mechanical amusement device that does not have the
31 necessary indicia of tax payment conspicuously displayed upon it shall be
32 subject to being sealed by the director or the director's designee. If such
33 seal is broken prior to payment of the tax levied by section 5, and
34 amendments thereto, upon such device, the device shall be subject to
35 forfeiture and sale by the director.

36 (c) Any person violating this act shall be guilty of a misdemeanor,
37 and the person shall be fined not less than \$200. Each day on which any
38 person engages in or conducts the business of operating or distributing a
39 mechanical amusement device without having paid the tax or obtained the
40 required license as provided shall constitute a separate offense.

41 New Sec. 9. Prosecutions for any violation of sections 1 through 10,
42 and amendments thereto, shall be brought by the attorney general or
43 county attorney in the county in which the violation occurs. Any

1 prosecution for the violation of any of the provisions of sections 1 through
2 10, and amendments thereto, shall be instituted within three years after the
3 commission of the offense.

4 New Sec. 10. The administration of the provisions of sections 1
5 through 10, and amendments thereto, is hereby vested in the director. The
6 director may adopt any rules and regulations necessary to administer and
7 enforce the provisions of this act.

8 Sec. 11. K.S.A. 2017 Supp. 79-3603 is hereby amended to read as
9 follows: 79-3603. For the privilege of engaging in the business of selling
10 tangible personal property at retail in this state or rendering or furnishing
11 any of the services taxable under this act, there is hereby levied and there
12 shall be collected and paid a tax at the rate of 6.15%, and commencing
13 July 1, 2015, at the rate of 6.5%. Within a redevelopment district
14 established pursuant to K.S.A. 74-8921, and amendments thereto, there is
15 hereby levied and there shall be collected and paid an additional tax at the
16 rate of 2% until the earlier of the date the bonds issued to finance or
17 refinance the redevelopment project have been paid in full or the final
18 scheduled maturity of the first series of bonds issued to finance any part of
19 the project upon:

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

22 (b) the gross receipts from intrastate, interstate or international
23 telecommunications services and any ancillary services sourced to this
24 state in accordance with K.S.A. 2017 Supp. 79-3673, and amendments
25 thereto, except that telecommunications service does not include: (1) Any
26 interstate or international 800 or 900 service; (2) any interstate or
27 international private communications service as defined in K.S.A. 2017
28 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
29 data service; (4) any telecommunication service to a provider of
30 telecommunication services which will be used to render
31 telecommunications services, including carrier access services; or (5) any
32 service or transaction defined in this section among entities classified as
33 members of an affiliated group as provided by section 1504 of the federal
34 internal revenue code of 1986, as in effect on January 1, 2001;

35 (c) the gross receipts from the sale or furnishing of gas, water,
36 electricity and heat, which sale is not otherwise exempt from taxation
37 under the provisions of this act, and whether furnished by municipally or
38 privately owned utilities, except that, on and after January 1, 2006, for
39 sales of gas, electricity and heat delivered through mains, lines or pipes to
40 residential premises for noncommercial use by the occupant of such
41 premises, and for agricultural use and also, for such use, all sales of
42 propane gas, the state rate shall be 0%; and for all sales of propane gas, LP
43 gas, coal, wood and other fuel sources for the production of heat or

1 lighting for noncommercial use of an occupant of residential premises, the
2 state rate shall be 0%, but such tax shall not be levied and collected upon
3 the gross receipts from: (1) The sale of a rural water district benefit unit;
4 (2) a water system impact fee, system enhancement fee or similar fee
5 collected by a water supplier as a condition for establishing service; or (3)
6 connection or reconnection fees collected by a water supplier;

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

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

16 (f) the gross receipts from the operation of any coin-operated device
17 dispensing or providing tangible personal property, amusement or other
18 services except: (1) Laundry services, whether automatic or manually
19 operated; and (2) *on and after January 1, 2019, mechanical amusement*
20 *devises, as defined by section 2, and amendments thereto;*

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

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

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

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

43 (k) the gross receipts from cable, community antennae and other

1 subscriber radio and television services;

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

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

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

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

38 (o) the gross receipts received from the isolated or occasional sale of
39 motor vehicles or trailers but not including: (1) The transfer of motor
40 vehicles or trailers by a person to a corporation or limited liability
41 company solely in exchange for stock securities or membership interest in
42 such corporation or limited liability company; (2) the transfer of motor
43 vehicles or trailers by one corporation or limited liability company to

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

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

40 For the purposes of this subsection:

41 (1) "Original construction" shall mean the first or initial construction
42 of a new building or facility. The term "original construction" shall include
43 the addition of an entire room or floor to any existing building or facility,

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

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

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

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

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

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

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

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

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

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

2 (u) the gross receipts received from the sale of prepaid calling service
3 and prepaid wireless calling service as defined in K.S.A. 2017 Supp. 79-
4 3673, and amendments thereto;

5 (v) all sales of bingo cards, bingo faces and instant bingo tickets by
6 licensees under K.S.A. 2017 Supp. 75-5171 et seq., and amendments
7 thereto, shall be exempt from taxes imposed pursuant to this section; and

8 (w) all sales of charitable raffle tickets in accordance with K.S.A.
9 2017 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
10 from taxes imposed pursuant to this section.

11 Sec. 12. K.S.A. 2017 Supp. 79-3603 is hereby repealed.

12 Sec. 13. This act shall take effect and be in force from and after its
13 publication in the statute book.