

**House Committee on Taxation**  
**Neutral Testimony on House Bill 2352**  
**Presented by Eric Stafford, Vice President of Government Affairs**

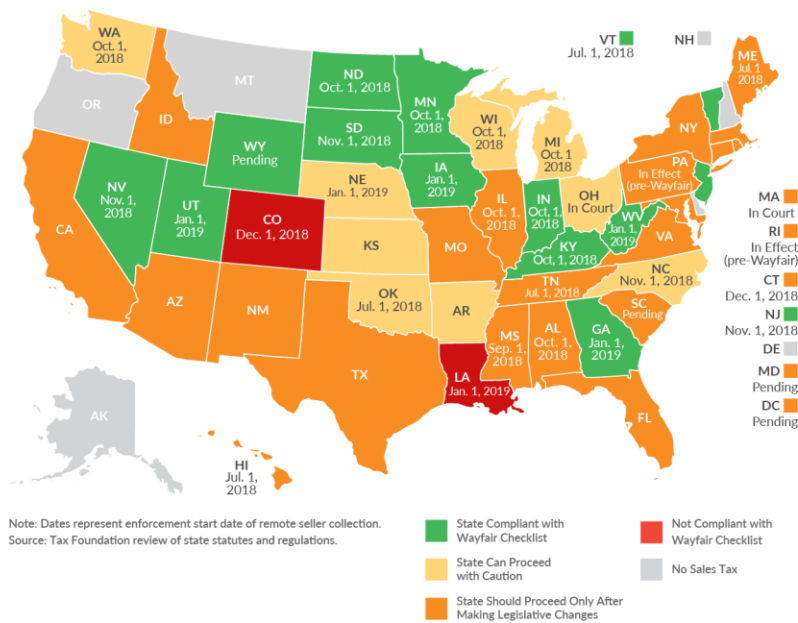
**Thursday, February 21, 2019**

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber appreciates the opportunity to testify on House Bill 2352 which would subject online sales to state sales tax and level the playing field for brick and mortar retailers who currently operate at a competitive disadvantage to retailers with no physical presence in the state.

This has been something on our agenda since 2013, but the path forward for states has been murky at best. Last year we testified on HB 2756 and encouraged support for the subject matter, but also patience as we all awaited the outcome of the U.S Supreme Court case *South Dakota v. Wayfair*. That decision came out in June 2018 and provided a clearer path for states, although some restrictions applied.

**Is Your State Prepared to Tax Internet Sellers?**

Status as of November, 2018



TAX FOUNDATION @TaxFoundation

The Tax Foundation as a resource for states released their “Wayfair Checklist” for states considering taxing online sales. The Tax Foundation states:

The Court provided a checklist of factors present in South Dakota law that strongly suggested why it would be constitutional under this standard (our comments on these provisions are in red):

- Safe harbor: Exclude “those who transact only limited business” in the state. (South Dakota’s is \$100,000 in sales or 200 transactions.) (Our draft has a \$100,000 in sales threshold)
- No retroactive collection.
- Single state-level administration of all sales taxes in the state.
- Uniform definitions of products and services.
- Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
- Software: access to sales tax administration software provided by the state.
- Immunity: sellers who use the software are not liable for errors derived from relying on it (streamlined sales tax agreement offers list of qualified vendor).

Attached to our testimony is a draft version of legislation we have been working on and are now ready to present after receiving continued feedback from our members over the past several months. It is important to point out our neutral position on HB 2352 is due to some concerns over language in this bill we believe is more technical in nature but would like to be certain, and because we were waiting for our version to be finalized.

As we prepared for introduction of this legislation in 2019, our tax work group took input from retail members, large and small. The biggest change that resulted from our member input was focusing solely on a dollar threshold and not including a minimum transaction limit to qualify for nexus in the state. Our draft language mirrors HB 2352 in the sense that we also propose a \$100,000 threshold but not a 200-transaction limit like South Dakota. Our small business retailers asked that we support those retailers who might have high volume, low cost transactions in various states to help keep their compliance costs lower.

Our proposed amendment also has a provision which buys-down the state sales tax rate going forward starting next year after the department of revenue has had time to analyze the sales tax revenue collected under this new law.

Finally, the picture included on page 1 from the Tax Foundation shows Kansas can “proceed with caution.” That is because we have what’s known as “Click Through” Nexus statutes on the books which were passed in 2013. Our proposed language eliminates related statute and would resolve any conflict which might be created.

We appreciate the opportunity to testify as a neutral party to House Bill 2352, and I am happy to answer any questions at the appropriate time.

AN ACT concerning sales and compensating use tax; relating to imposition of tax; rates; nexus; remote sellers; amending K.S.A. 2018 Supp. 79-3603, 79-3620, 79-3702, 79-3703 and 79-3710 and repealing the existing sections.

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

New Section 1. As used in sections 1 through 8, and amendments thereto:

(a) "Affiliated person" means a person that, with respect to another person: (1) Has an ownership interest of more than 5%, whether direct or indirect, in the other person; or (2) is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than 5%, whether direct or indirect, in the related persons.

(b) "Delivery" means the method by which a retailer delivers tangible personal property or a service that it has sold to a customer, however effected, including through electronic delivery. A delivery includes a delivery made by the retailer itself, an affiliated person or a contract party.

(c) "Delivery company" means an unaffiliated person that, pursuant to an agreement with a retailer, delivers tangible personal property or services sold by such retailer and may also provide additional services, including order fulfillment, order management, return processing, the preparation of sales reports or other analytics and consumer access to customer service.

(d) "Department" means the Kansas department of revenue.

(e) "Kansas sales" means all sales made by a retailer of tangible personal property or services delivered into the state, however consummated.

(f) "Marketplace facilitator" means a person that, pursuant to an agreement with a

retailer, facilitates sales by such retailer through a physical or electronic marketplace operated by the person, and engages:

(1) Directly or indirectly, through one or more affiliated persons in any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between a buyer and retailer;

(B) owning or operating the infrastructure, electronic or physical, or technology that brings buyers and retailers together;

(C) providing a virtual currency that buyers are allowed or required to use to purchase products from the retailer; or

(D) software development or research and development activities related to any of the activities described in this subsection, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(2) engages in any of the following activities with respect to the retailer's products:

(A) Payment processing services;

(B) fulfillment or storage services;

(C) listing products for sale;

(D) setting prices;

(E) branding sales as those of the marketplace facilitator;

(F) order taking;

(G) advertising or promotion; or

(H) providing customer service or accepting or assisting with returns or exchanges.

A "marketplace facilitator" does not include a platform or forum that exclusively provides internet advertising services, including listing products for sale, so long as the internet advertising service platform or forum does not also engage directly or indirectly through one or more affiliated persons in the activities described in subsection (f).

A person is not a "marketplace facilitator" with respect to the sale or charges for rooms, lodgings or accommodations provided by a hotel, motel, inn, or other place that provides the rooms, lodgings or accommodations for occupancy under a brand belonging to such person.

(g) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department.

(h) "Otherwise subject to tax" means Kansas sales or use tax jurisdiction over a retailer, including an internet retailer, that is conferred by in-state contacts other than as referenced in this subsection.

(i) "Platform" means an electronic or physical medium, including a website or catalog, operated by a referrer.

(j) "Referral" means the transfer by a referrer of a potential customer to a seller or marketplace seller that advertises or lists products for sale on the referrer's platform.

(k) "Referrer" means a person, other than a person engaging in the business of printing a newspaper or publishing a newspaper, who contracts or otherwise agrees with a seller or marketplace seller to list or advertise for sale one or more items in any medium, including a website or catalog; receives a commission, fee or other consideration from the seller for the listing or advertisement; transfers, via telephone, internet link, or other means, a purchaser to a

seller or an affiliated person to complete the sale; and does not collect receipts from the purchasers for the transaction.

"Referrer" does not include a person that:

- (1) Provides internet advertising services; and
- (2) does not ever provide either the seller's or marketplace seller's shipping terms or advertise whether the seller or marketplace seller charges sales tax.

(l) "Sale" or "sales" shall have the same meaning as defined in K.S.A. 79-3602(kk), whether or not such sales qualify for a sales tax exemption.

(m) "Seller" shall have the same meaning as defined in K.S.A. 79-3602(mm) and includes marketplace facilitators, whether making sales in the seller's own right or on behalf of marketplace sellers.

(n) "Tax" means the sales tax imposed under K.S.A. 79-3603, and amendments thereto, or the use tax imposed under K.S.A. 79-3703, and amendments thereto.

(o) "Transaction" means a sale of tangible personal property or a service by a retailer including, but not limited to, all such retailer's transactions for tangible personal property or a service, however consummated, including transactions completed on a website operated by:

- (1) The retailer;
- (2) an affiliated person; or
- (3) a contract party, including a marketplace facilitator.

(r) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as practicable, shall be applicable herein unless otherwise provided.

New Sec. 2. (a) On and after October 1, 2019, any marketplace facilitator that meets the

criteria in subsection (b) or that has a physical presence in this state, must collect and remit retail sales or use tax on all taxable retail sales into this state pursuant to this act. Marketplace facilitators must begin collecting state and local retail sales or use taxes on taxable retail sales sourced to this state beginning on the first day of the next calendar month that is at least 30 days from the date that the marketplace facilitator met the threshold described in subsection (b).

(b) A marketplace facilitator is subject to subsection (a) if, during the current or immediately preceding calendar year, the gross receipts from retail sales sourced to this state pursuant to the Kansas retailers' sales tax act by the marketplace facilitator, whether in its own name or as an agent of a marketplace seller, totaled at least \$100,000.

New Sec. 3. (a) (1) For purposes of this act, and both the Kansas retailers' sales tax act and the Kansas compensating tax act, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace.

(2) The department shall solely audit the marketplace facilitator for sales made by marketplace facilitators and facilitated by the marketplace facilitator.

(b) A marketplace facilitator is relieved of liability under this act for failure to collect the correct amount of tax to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and marketplace seller are affiliated persons. When the marketplace facilitator is relieved of liability under this subsection, the marketplace seller is solely liable for the amount of uncollected tax due.

(c) Except as otherwise provided in this section, a marketplace seller obligated to

collect the taxes imposed under this act is not required to collect such taxes on all taxable retail sales through a marketplace operated by a marketplace facilitator if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under this act, the Kansas retailers' sales tax act or the Kansas compensating tax act on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator. The documentation required by this subsection must be provided in a form and manner prescribed by or acceptable to the department. The marketplace facilitator may certify to its marketplace sellers that it will collect and remit sales and use tax on taxable retail sales made through the marketplace through an explicit provision in the marketplace facilitator's contract with the marketplace seller. This subsection does not relieve a marketplace seller from liability for uncollected taxes due under this act, the Kansas retailers' sales tax act or the Kansas compensating tax act resulting from a marketplace facilitator's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator by the marketplace seller.

(d) No class action may be brought against a marketplace facilitator in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator or referrer, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund from the department as provided by the Kansas retailers' sales tax act.

New Sec. 4. (a) Except as otherwise provided in sections 1 through 8, and amendments thereto, taxes imposed under the Kansas retailers' sales tax act or the Kansas compensating tax



act and payable by a consumer directly to the department are due, on returns prescribed by the department, as prescribed by those acts.

(b) Nothing in this act affects the obligation of any purchaser from this state to remit retail sales or use tax as to any applicable taxable transaction in which the seller does not collect and remit retail sales or use tax.

New Sec. 5. (a) A marketplace facilitator that is subject to section 2, and amendments thereto, and is complying with the requirements of the Kansas retailers' sales tax act or the Kansas compensating tax act may only seek a recovery of retail sales and use taxes, penalties or interest from the department by following the recovery procedures established under the Kansas retailers' sales tax act. However, no claim may be granted on the basis that the taxpayer lacked a physical presence in this state and complied with the tax collection provisions of the Kansas retailers' sales tax act or the Kansas compensating tax act voluntarily.

(b) Neither the state nor any seller who collects and remits retail sales or use tax under section 2, and amendments thereto, is liable to a purchaser that claims that the retail sales or use tax has been over-collected because a provision of this act is later deemed unlawful.

New Sec. 6. The provisions of K.S.A. 79-3601 through 79-3696, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of sections 1 through 7, and amendments thereto.

New Sec. 7. The secretary of revenue shall adopt such rules and regulations as deemed necessary for the administration of sections 1 through 7, and amendments thereto.

New Sec. 8. If any provision of sections 1 through 7, and amendments thereto, or the

application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

New Sec. 9. Commencing with fiscal year 2020, in any fiscal year in which any increase in revenue attributable to the operation of the provisions of K.S.A. 79-3702, and amendments thereto, or sections 1 through 8, and amendments thereto, as each such section is specifically amended on and after July 1, 2019, exceeds the revenue attributable to such provisions for the immediately preceding fiscal year, the director of legislative research shall certify such excess amount to the secretary of revenue and the director of the budget. Upon receipt of such certified amount, the secretary shall compute a reduction in the Kansas retailers' sales and compensating use tax rate reductions, if any, to go into effect for the next tax year that would reduce such certified amount, in dollars, the revenues received from taxes from sales and compensating use taxes. The secretary shall publish the new sales and compensating use tax rate to take effect on January 1, by October 1 of the preceding year.

Sec. 10. K.S.A. 2018 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of ~~6.15%, and commencing July 1, 2015, at the rate of 6.5%.~~ except as otherwise provided by section 9, and amendments thereto; and within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been

paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project. Such tax shall be imposed upon:

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

(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2018 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2018 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (5) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001;

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

tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

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

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

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

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

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue

bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

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

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

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

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

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

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

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

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership

interest in such corporation or limited liability company; (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and amendments thereto, by an immediate family member to another immediate family member. For the purposes of paragraph (3), immediate family member means lineal ascendants or descendants, and their spouses. Any amount of sales tax paid pursuant to the Kansas retailers sales tax act on the isolated or occasional sale of motor vehicles or trailers on and after July 1, 2004, which the base for computing the tax was the value pursuant to K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when such amount was higher than the amount of sales tax which would have been paid under the law as it existed on June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure prescribed by this section. Such refund shall be in an amount equal to the difference between the amount of sales tax paid by the taxpayer and the amount of sales tax which would have been paid by the taxpayer under the law as it existed on June 30, 2004. Each claim for a sales tax refund shall be verified and submitted not later than six months from the effective date of this act to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of tax paid as provided by this act. All such refunds shall be paid from the sales tax refund fund, upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation or the director's designee. No refund for an amount less than \$10 shall be paid pursuant to this act. In determining the base

for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

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

For the purposes of this subsection:

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

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



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

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

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

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

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

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

(s) on and after January 1, 2005, the gross receipts received from the sale of prewritten

computer software and the sale of the services of modifying, altering, updating or maintaining prewritten computer software, whether the prewritten computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;

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

(u) the gross receipts received from the sale of prepaid calling service and prepaid wireless calling service as defined in K.S.A. 2018 Supp. 79-3673, and amendments thereto;

(v) all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section; and

(w) all sales of charitable raffle tickets in accordance with K.S.A. 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

Sec. 11. K.S.A. 2018 Supp. 79-3620 is hereby amended to read as follows: 79-3620. (a) All revenue collected or received by the director of taxation from the taxes imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts withheld as provided in subsection (b) and amounts credited as provided in subsections (c), (d) and (e), to the credit of the state general fund.

(b) A refund fund, designated as "sales tax refund fund" not to exceed \$100,000 shall be set apart and maintained by the director from sales tax collections and estimated tax collections and held by the state treasurer for prompt payment of all sales tax refunds. Such fund shall be in

such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act. In the event such fund as established by this section is, at any time, insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funds required to the director of accounts and reports who shall promptly transfer the required amount from the state general fund to the sales tax refund fund, and notify the state treasurer, who shall make proper entry in the records.

~~(c) (1) — On July 1, 2010, the state treasurer shall credit 11.427% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(2) — On July 1, 2011, the state treasurer shall credit 11.26% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(3) — On July 1, 2012, the state treasurer shall credit 11.233% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(4) — On July 1, 2013, the state treasurer shall credit 17.073% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.15%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(5) On July 1, 2015, the state treasurer shall credit 16.226% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(6)~~ On July 1, 2016, and thereafter, the state treasurer shall credit 16.154% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.5%, or as otherwise provided by section 9, and amendments thereto, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a STAR bond project district occupied by a STAR bond project or taxpayers doing business with such entity financed by a STAR bond project as defined in K.S.A. 2018 Supp. 12-17,162, and amendments thereto, that was determined by the secretary of commerce to be of statewide as well as local importance or will create a major tourism area for the state or the project was designated as a STAR bond project as defined in K.S.A. 2018 Supp. 12-17,162, and amendments thereto, to the city bond finance fund, which fund is hereby created. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under K.S.A. 79-3710(d), and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such STAR bond project.

(e) All revenue certified by the director of taxation as having been collected or received

from the tax imposed by K.S.A. 79-3603(c), and amendments thereto, on the sale or furnishing of gas, water, electricity and heat for use or consumption within the intermodal facility district described in this subsection, shall be credited by the state treasurer to the state highway fund. Such revenue may be transferred by the secretary of transportation to the rail service improvement fund pursuant to law. The provisions of this subsection shall take effect upon certification by the secretary of transportation that a notice to proceed has been received for the construction of the improvements within the intermodal facility district, but not later than December 31, 2010, and shall expire when the secretary of revenue determines that the total of all amounts credited hereunder and pursuant to K.S.A. 79-3710(e), and amendments thereto, is equal to \$53,300,000, but not later than December 31, 2045. Thereafter, all revenues shall be collected and distributed in accordance with applicable law. For all tax reporting periods during which the provisions of this subsection are in effect, none of the exemptions contained in K.S.A. 79-3601 et seq., and amendments thereto, shall apply to the sale or furnishing of any gas, water, electricity and heat for use or consumption within the intermodal facility district. As used in this subsection, "intermodal facility district" shall consist of an intermodal transportation area as defined by K.S.A. 12-1770a(oo), and amendments thereto, located in Johnson county within the polygonal-shaped area having Waverly Road as the eastern boundary, 191<sup>st</sup> Street as the southern boundary, Four Corners Road as the western boundary, and Highway 56 as the northern boundary, and the polygonal-shaped area having Poplar Road as the eastern boundary, 183<sup>rd</sup> Street as the southern boundary, Waverly Road as the western boundary, and the BNSF mainline track as the northern boundary, that includes capital investment in an amount exceeding \$150 million for the construction of an intermodal facility to handle the transfer, storage and

distribution of freight through railway and trucking operations.

Sec. 12. K.S.A. 2018 Supp. 79-3702 is hereby amended to read as follows: 79-3702. For the purposes of this act: (a) "Purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale it shall be deducted in arriving at the purchase price.

(b) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as is practicable, shall be applicable herein unless otherwise provided. The provisions of K.S.A. 79-3601 ~~to~~ through 79-3625, ~~inclusive~~, 79-3650, and amendments thereto, and K.S.A. 2018 Supp. 79-3693 and 79-3694, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of this act.

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

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

(e) "Storage" and "use" do not include the keeping, retaining or exercising of any right

or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

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

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

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

business;

(B) any retailer utilizing an employee, independent contractor, agent, representative, salesperson, canvasser, solicitor or other person operating in this state either permanently or temporarily, for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

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

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

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

(F) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States; and

(G) for any retailer that does not satisfy any of the requirements contained in subparagraphs (A) through (F), such retailer shall be a retailer doing business in this state, if, during the current or immediately preceding calendar year, the retailer had in excess of \$100,000 of cumulative gross receipts not otherwise exempt from Kansas sales tax from sales by the retailer to customers in this state.

(2) A retailer shall be presumed to be doing business in this state if ~~any of the following~~



occur:

~~(A) Any person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state:~~

~~(i) Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;~~

~~(ii) maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;~~

~~(iii) uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the retailer;~~

~~(iv) delivers, installs, assembles or performs maintenance services for the retailer's customers within the state;~~

~~(v) facilitates the retailer's delivery of property to customers in the state by allowing the retailer's customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;~~

~~(vi) has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act; or~~

~~(vii) conducts any other activities in the state that are significantly associated with the retailer's ability to establish and maintain a market in the state for the retailer's sales.~~

~~(B) Any affiliated person conducting activities in this state described in subparagraph~~

~~(A) or (C) has nexus with this state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state.~~

~~(C) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of \$10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer's ability to establish or maintain the retailer's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date of this subparagraph.~~

~~(D) The presumptions in subparagraphs (A) and (B) may be rebutted by demonstrating~~

~~that the activities of the person or affiliated person in the state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales~~ the retailer has in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state, such retailer shall have nexus with this state sufficient to require such retailer to collect and remit taxes under the provisions of the constitution and laws of the United States, if such retailer were making taxable retail sales of tangible personal property in this state.

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

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

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

Sec. 13. K.S.A. 2018 Supp. 79-3703 is hereby amended to read as follows: 79-3703. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using, storing, or consuming within this state any article of tangible personal property. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by the rate of 6.5%, except as otherwise provided by section 9, and amendments thereto. Within a redevelopment district established pursuant to K.S.A. 74-8921,

and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax of 2% until the earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project. All property purchased or leased within or without this state and subsequently used, stored or consumed in this state shall be subject to the compensating tax if the same property or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state.

Sec. 14. K.S.A. 2018 Supp. 79-3710 is hereby amended to read as follows: 79-3710. (a) All revenue collected or received by the director under the provisions of this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts set apart as provided in subsection (b) and amounts credited as provided in subsection (c), (d) and (e), to the credit of the state general fund.

(b) A revolving fund, designated as "compensating tax refund fund" not to exceed \$10,000 shall be set apart and maintained by the director from compensating tax collections and estimated tax collections and held by the state treasurer for prompt payment of all compensating tax refunds. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act.

~~(c) (1) On July 1, 2010, the state treasurer shall credit 11.427% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(2) On July 1, 2011, the state treasurer shall credit 11.26% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(3) On July 1, 2012, the state treasurer shall credit 11.233% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(4) On July 1, 2013, the state treasurer shall credit 17.073% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.15%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(5) On July 1, 2015, the state treasurer shall credit 16.226% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.~~

~~(6)~~ On July 1, 2016, and thereafter, the state treasurer shall credit 16.154% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 6.5%, or as otherwise provided by section 9, and amendments thereto, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(d) The state treasurer shall credit all revenue collected or received from the tax

imposed by K.S.A. 79-3703, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a redevelopment district occupied by a redevelopment project that was determined by the secretary of commerce to be of statewide as well as local importance or will create a major tourism area for the state as defined in K.S.A. 12-1770a, and amendments thereto, to the city bond finance fund created by K.S.A. 79-3620(d), and amendments thereto. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under K.S.A. 79-3620(d), and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such redevelopment project.

This subsection shall not apply to a project designated as a special bond project as defined in K.S.A. 12-1770a(z), and amendments thereto.

(e) All revenue certified by the director of taxation as having been collected or received from the tax imposed by K.S.A. 79-3603(c), and amendments thereto, on the sale or furnishing of gas, water, electricity and heat for use or consumption within the intermodal facility district described in this subsection, shall be credited by the state treasurer to the state highway fund. Such revenue may be transferred by the secretary of transportation to the rail service improvement fund pursuant to law. The provisions of this subsection shall take effect upon certification by the secretary of transportation that a notice to proceed has been received for the construction of the improvements within the intermodal facility district, but not later than December 31, 2010, and shall expire when the secretary of revenue determines that the total of all amounts credited hereunder and pursuant to K.S.A. 79-3620(e), and amendments thereto, is equal to \$53,300,000, but not later than December 31, 2045. Thereafter, all revenues shall be

collected and distributed in accordance with applicable law. For all tax reporting periods during which the provisions of this subsection are in effect, none of the exemptions contained in K.S.A. 79-3601 et seq., and amendments thereto, shall apply to the sale or furnishing of any gas, water, electricity and heat for use or consumption within the intermodal facility district. As used in this subsection, "intermodal facility district" shall consist of an intermodal transportation area as defined by K.S.A. 12-1770a(oo), and amendments thereto, located in Johnson county within the polygonal-shaped area having Waverly Road as the eastern boundary, 191<sup>st</sup> Street as the southern boundary, Four Corners Road as the western boundary, and Highway 56 as the northern boundary, and the polygonal-shaped area having Poplar Road as the eastern boundary, 183<sup>rd</sup> Street as the southern boundary, Waverly Road as the western boundary, and the BNSF mainline track as the northern boundary, that includes capital investment in an amount exceeding \$150 million for the construction of an intermodal facility to handle the transfer, storage and distribution of freight through railway and trucking operations.

Sec. 15. K.S.A. 2018 Supp. 79-3603, 79-3620, 79-3702, 79-3703 and 79-3710 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.