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## MEMORANDUM

TO: Governor's Council on Tax Reform

FROM: Michael Hale, Attorney  
Kansas Department of Revenue

RE: Digital Products Proposal

DATE: December 3, 2019

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In response to a request made at the October 14-15 Council meeting, the following information is provided regarding the inclusion of digital products in the state sales and use tax base.

### **I. SUMMARY OF PROPOSAL**

Twenty-nine of the forty-five states that have a retailer's sales tax, include the sale of digital products in their tax bases. Kansas may again want to consider such legislation. Reasons for including such sales in the tax base include:

1. Changes in technology have allowed what were once taxable sales of tangible personal property to now avoid tax merely because the property is delivered in digital format.
2. The technological advances in the delivery of property were never contemplated by the Legislature in 1937 when the sales tax act was enacted, and effectively result in unintended exclusions from the state tax base.
3. The state and local sales tax base continues to shrink in light of these unintended exclusions.
4. The current statutory scheme is not fair and equitable. The inclusion of digital products in the tax base would be a step toward leveling the playing field between brick and mortar stores and retailers selling digital products. A book delivered in digital format should, for tax purposes, be treated in the same manner as a book purchased from a brick and mortar store.

### **II. SUMMARY OF LEGISLATION**

The proposed legislation, a copy of which is attached, would tax all sales of digital products and subscription services, including digital audio-visual works, digital audio works, digital books, artwork, digital photographs and pictures, periodicals, newspapers, magazines, video, audio and

other greeting cards, graphics, templates, patterns, desktop applications, mobile applications, web applications, cloud based applications, native applications, online games, video games, electronic games, any digital code related to any of the above items and any streaming services related to the above items.

### **III. FISCAL NOTE**

The imposition of sales tax on digital products is estimated to increase sales tax receipts by \$30 Million annually.

1 2020

2 BILL NO. \_\_\_\_\_

3  
4 By Committee on Assessment and Taxation

5  
6 AN ACT concerning sales tax; relating to digital property and  
7 subscription services; amending K.S.A. 2019 Supp. 79-3602 and 79-  
8 3603 and repealing the existing sections.

9  
10 *Be it enacted by the Legislature of the State of Kansas:*

11 Sec. 1 . K.S.A. 2019 Supp. 79-3602 is hereby amended to read as follows:  
12 79-3602. Except as otherwise provided, as used in the Kansas retailers' sales  
13 tax act:

14 (a) "Agent" means a person appointed by a seller to represent the seller  
15 before the member states.

16 (b) "Agreement" means the multistate agreement entitled the streamlined  
17 sales and use tax agreement approved by the streamlined sales tax  
18 implementing states at Chicago, Illinois on November 12, 2002.

19 (c) "Alcoholic beverages" means beverages that are suitable for human  
20 consumption and contain 0.05% or more of alcohol by volume.

21 (d) *"Ancillary services" means services that are associated with or*  
22 *incidental to the provision of telecommunications services, including, but not*  
23 *limited to, detailed communications billing, directory assistance, vertical*  
24 *service and voice mail services.*

25 (e) *"Applications" or "apps" means software programs, services or resources*  
26 *made available to users via the internet, designed to perform a group of*  
27 *coordinated functions, tasks or activities and includes, but is not limited to,*  
28 *cloud-based applications, desktop applications, mobile applications, native*  
29 *applications and web applications.*

30 (f) "Certified automated system (CAS)" means software certified under the  
31 agreement to calculate the tax imposed by each jurisdiction on a transaction,  
32 determine the amount of tax to remit to the appropriate state and maintain a  
33 record of the transaction.

34 (e)(g) "Certified service provider (CSP)" means an agent certified  
35 under the agreement to perform all the seller's sales and use tax functions,

1 other than the seller's obligation to remit tax on its own purchases.

2 ~~(f)~~(h) "Computer" means an electronic device that accepts information in  
3 digital or similar form and manipulates it for a result based on a sequence of  
4 instructions.

5 ~~(g)~~(i) "Computer software" means a set of coded instructions designed  
6 to cause a computer or automatic data processing equipment to perform a task.

7 (j) *"Conference bridging service" means an ancillary service that links two*  
8 *or more participants of an audio or video conference call and may include*  
9 *the provision of a telephone number. "Conference bridging service" does not*  
10 *include the telecommunications services used to reach the conference bridge,*  
11 *links two or more participants of an audio or video conference call and may*  
12 *include the provision of a telephone number. "Conference bridging service"*  
13 *does not include the telecommunications services used to reach the*  
14 *conference bridge.*

15 ~~(h)~~(k) "Delivered electronically" means delivered to the purchaser by means  
16 other than tangible storage media.

17 ~~(i)~~(l) "Delivery charges" means charges by the seller of personal property  
18 or services for preparation and delivery to a location designated by the  
19 purchaser of personal property or services including, but not limited to,  
20 transportation, shipping, postage, handling, crating and packing. Delivery  
21 charges shall not include charges for delivery of direct mail if the charges are  
22 separately stated on an invoice or similar billing document given to the  
23 purchaser.

24 (m) *"Detailed telecommunications billing service" means an ancillary*  
25 *service of separately stating information pertaining to individual calls on a*  
26 *customer's billing statement.*

27 (n) *"Digital audio-visual works" means a series of related images that,*  
28 *when shown in succession, impart an impression of motion, with*  
29 *accompanying sounds, if any, and includes, but is not limited to, movies,*  
30 *motion pictures, musical videos, news and entertainment programs, and live*  
31 *events. "Digital audio-visual works" shall not include video greeting cards,*  
32 *video games or electronic games.*

33 (o) *"Digital audio works" means works that result from the fixation of a series*  
34 *of musical, spoken or other sounds and includes, but is not limited to,*

1 ringtones, recorded or live songs, music, readings of books or other written  
2 materials, speeches or other sound recordings. "Digital audio works"  
3 shall not include audio greeting cards sent by electronic mail.

4 (p) "Digital books" means works that are generally recognized in the  
5 ordinary and usual sense as books, including any literary work expressed in  
6 words, numbers or other verbal or numerical symbols or indicia if the  
7 literary work is generally recognized in the ordinary or usual sense as a  
8 book. "Digital books" shall not include digital audio-visual works, digital  
9 audio works, periodicals, magazines, newspapers or other news or  
10 information products, chat rooms or web logs.

11 (q) (1) "Digital code" means a code that provides a purchaser with a right to  
12 obtain one or more types of digital property. A "digital code" may be obtained  
13 by any means, including electronic mail messaging or by tangible means,  
14 regardless of the code's designation as a song code, video code or book code.

15 (2) "Digital code" shall not include a code that represents: (A) A stored  
16 monetary value that is deducted from a total as it is used by the purchaser;  
17 or (B) a redeemable card, gift card or gift certificate that entitles the holder  
18 to select specific types of digital property.

19 (r) "Digital property" means media or products that are encoded in  
20 machine-readable formats and includes, but is not limited to, any of the  
21 following that are transferred electronically:

22 (1) Digital audio-visual works;

23 (2) digital audio works;

24 (3) digital books;

25 (4) artwork;

26 (5) digital photographs and pictures;

27 (6) periodicals;

28 (7) newspapers;

29 (8) magazines;

30 (9) video, audio and other greeting cards;

31 (10) graphics;

32 (11) templates;

33 (12) patterns;

34 (13) desktop applications;

35 (14) mobile applications;

1 *(15) web applications;*

2 *(16) cloud-based applications;*

3 *(17) native applications;*

4 *(18) online games;*

5 *(19) video games;*

6 *(20) electronic games;*

7 *(21) any digital code related to any of the items listed above; or*

8 *(22) any streaming services related to any of the items listed above.*

9 ~~(j)~~(s) "Direct mail" means printed material delivered or distributed by United  
10 States mail or other delivery services to a mass audience or to addressees  
11 on a mailing list provided by the purchaser or at the direction of the purchaser  
12 when the cost of the items are not billed directly to the recipients. Direct  
13 mail includes tangible personal property supplied directly or indirectly  
14 by the purchaser to the direct mail seller for inclusion in the package  
15 containing the printed material. Direct mail does not include multiple items  
16 of printed material delivered to a single address.

17 ~~(k)~~(t) "Director" means the state director of taxation.

18 *(u) Directory assistance" means an ancillary service of providing telephone*  
19 *number information or address information, or both.*

20 ~~(h)~~(v) "Educational institution" means any nonprofit school, college and  
21 university that offers education at a level above the 12<sup>th</sup> grade, and  
22 conducts regular classes and courses of study required for accreditation by, or  
23 membership in, the higher learning commission, the state board of  
24 education, or that otherwise qualify as an "educational institution," as  
25 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall  
26 include: (1) A group of educational institutions that operates exclusively  
27 for an educational purpose; (2) nonprofit endowment associations and  
28 foundations organized and operated exclusively to receive, hold, invest  
29 and administer moneys and property as a permanent fund for the support  
30 and sole benefit of an educational institution; (3) nonprofit trusts,  
31 foundations and other entities organized and operated principally to hold and  
32 own receipts from intercollegiate sporting events and to disburse such  
33 receipts, as well as grants and gifts, in the interest of collegiate and  
34 intercollegiate athletic programs for the support and sole benefit of an  
35 educational institution; and (4) nonprofit trusts, foundations and other

1 entities organized and operated for the primary purpose of encouraging,  
2 fostering and conducting scholarly investigations and industrial and other  
3 types of research for the support and sole benefit of an educational  
4 institution.

5 ~~(m)~~(w) "Electronic" means relating to technology having electrical, digital,  
6 magnetic, wireless, optical, electromagnetic or similar capabilities.

7 (x) "*Entity-based exemption*" means an exemption based on who purchases  
8 the product or who sells the product. An exemption that is available to  
9 all individuals shall not be considered an entity-based exemption.

10 ~~(n)~~(y) "Food and food ingredients" means substances, whether in liquid,  
11 concentrated, solid, frozen, dried or dehydrated form, that are sold for  
12 ingestion or chewing by humans and are consumed for their taste or  
13 nutritional value. "Food and food ingredients" does not include alcoholic  
14 beverages or tobacco.

15 ~~(o)~~(z) "Gross receipts" means the total selling price or the amount received as  
16 defined in this act, in money, credits, property or other consideration  
17 valued in money from sales at retail within this state; and embraced within  
18 the provisions of this act. The taxpayer, may take credit in the report of gross  
19 receipts for: (1) An amount equal to the selling price of property returned by  
20 the purchaser when the full sale price thereof, including the tax collected,  
21 is refunded in cash or by credit; and (2) an amount equal to the allowance  
22 given for the trade-in of property.

23 ~~(p)~~(aa) "Ingredient or component part" means tangible personal  
24 property which is necessary or essential to, and which is actually used in and  
25 becomes an integral and material part of tangible personal property or services  
26 produced, manufactured or compounded for sale by the producer,  
27 manufacturer or compounder in its regular course of business. The  
28 following items of tangible personal property are hereby declared to be  
29 ingredients or component parts, but the listing of such property shall not be  
30 deemed to be exclusive nor shall such listing be construed to be a  
31 restriction upon, or an indication of, the type or types of property to be  
32 included within the definition of "ingredient or component part" as herein set  
33 forth: (1) Containers, labels and shipping cases used in the distribution  
34 of property produced, manufactured or compounded for sale which are not to  
35 be returned to the producer, manufacturer or compounder for reuse. (2)

1 Containers, labels, shipping cases, paper bags, drinking straws, paper  
2 plates, paper cups, twine and wrapping paper used in the distribution and sale  
3 of property taxable under the provisions of this act by wholesalers and retailers  
4 and which is not to be returned to such wholesaler or retailer for reuse. (3)  
5 Seeds and seedlings for the production of plants and plant products  
6 produced for resale. (4) Paper and ink used in the publication of newspapers.  
7 (5) Fertilizer used in the production of plants and plant products produced for  
8 resale. (6) Feed for animals, fowl and aquatic plants and animals, the  
9 primary purpose of which is use in agriculture or aquaculture, as defined in  
10 K.S.A. 47-1901, and amendments thereto, the production of food for  
11 human consumption, the production of animal, dairy, poultry or aquatic plant  
12 and animal products, fiber, fur, or the production of offspring for use for any  
13 such purpose or purposes.

14 *(bb) "International" means a telecommunications service that originates*  
15 *or terminates in the United States and terminates or originates outside the*  
16 *United States, respectively. The United States includes the District of*  
17 *Columbia or a U.S. territory or possession.*

18 *(cc) "Interstate" means a telecommunications service that originates in a*  
19 *state within the United States, or a United States territory or possession,*  
20 *and terminates in a different state within the United States or a United States*  
21 *territory or possession.*

22 *(dd) "Intrastate" means a telecommunications service that originates in a*  
23 *state within the United States or a United States territory or possession, and*  
24 *terminates in the same state within the United States or a United States*  
25 *territory or possession.*

26 ~~(e)~~*(ee) "Isolated or occasional sale" means the nonrecurring sale of tangible*  
27 *personal property, or services taxable hereunder by a person not engaged at*  
28 *the time of such sale in the business of selling such property or services. Any*  
29 *religious organization which makes a nonrecurring sale of tangible personal*  
30 *property acquired for the purpose of resale shall be deemed to be not*  
31 *engaged at the time of such sale in the business of selling such property. Such*  
32 *term shall include: (1) Any sale by a bank, savings and loan institution, credit*  
33 *union or any finance company licensed under the provisions of the Kansas*  
34 *uniform consumer credit code of tangible personal property which has*  
35 *been repossessed by any such entity; and (2) any sale of tangible personal*



1 property made by an auctioneer or agent on behalf of not more than two  
2 principals or households if such sale is nonrecurring and any such  
3 principal or household is not engaged at the time of such sale in the business  
4 of selling tangible personal property.

5 ~~(f)~~(ff) "Lease or rental" means any transfer of possession or control of tangible  
6 personal property for a fixed or indeterminate term for consideration.

7 A lease or rental may include future options to purchase or extend. (1) Lease  
8 or rental does not include: (A) A transfer of possession or control of  
9 property under a security agreement or deferred payment plan that requires  
10 the transfer of title upon completion of the required payments; (B) a  
11 transfer or possession or control of property under an agreement that  
12 requires the transfer of title upon completion of required payments and  
13 payment of an option price does not exceed the greater of \$100 or 1% of the  
14 total required payments; or (C) providing tangible personal property along  
15 with an operator for a fixed or indeterminate period of time. A condition of  
16 this exclusion is that the operator is necessary for the equipment to perform  
17 as designed. For the purpose of this subsection, an operator must do more  
18 than maintain, inspect or set-up the tangible personal property.

19 (2) Lease or rental does include agreements covering motor vehicles and  
20 trailers where the amount of consideration may be increased or decreased  
21 by reference to the amount realized upon sale or disposition of the property  
22 as defined in 26 U.S.C. § 7701(h)(1). (3) This definition shall be used for  
23 sales and use tax purposes regardless if a transaction is characterized as  
24 a lease or rental under generally accepted accounting principles, the  
25 internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et  
26 seq., and amendments thereto, or other provisions of federal, state or local law.

27 (4) This definition will be applied only prospectively from the effective date  
28 of this act and will have no retroactive impact on existing leases or rentals.

29 ~~(s)~~(gg) "Load and leave" means delivery to the purchaser by use of a tangible  
30 storage media where the tangible storage media is not physically transferred  
31 to the purchaser.

32 ~~(t)~~(hh) "Member state" means a state that has entered in the agreement,  
33 pursuant to provisions of article VIII of the agreement.

34 ~~(u)~~(ii) "Model 1 seller" means a seller that has selected a CSP as its agent to  
35 perform all the seller's sales and use tax functions, other than the seller's

1 obligation to remit tax on its own purchases.

2 ~~(v)~~(jj) "Model 2 seller" means a seller that has selected a CAS to  
3 perform part of its sales and use tax functions, but retains responsibility for  
4 remitting the tax.

5 ~~(w)~~(kk) "Model 3 seller" means a seller that has sales in at least five member  
6 states, has total annual sales revenue of at least \$500,000,000, has a  
7 proprietary system that calculates the amount of tax due each jurisdiction and  
8 has entered into a performance agreement with the member states that  
9 establishes a tax performance standard for the seller. As used in this subsection  
10 a seller includes an affiliated group of sellers using the same proprietary  
11 system.

12 ~~(x)~~(ll) "Municipal corporation" means any city incorporated under the laws of  
13 Kansas.

14 ~~(y)~~(mm) "Nonprofit blood bank" means any nonprofit place, organization,  
15 institution or establishment that is operated wholly or in part for the purpose  
16 of obtaining, storing, processing, preparing for transfusing, furnishing,  
17 donating or distributing human blood or parts or fractions of single blood  
18 units or products derived from single blood units, whether or not any  
19 remuneration is paid therefor, or whether such procedures are done for direct  
20 therapeutic use or for storage for future use of such products.

21 *(nn) "Over-the-counter drug" means a drug that contains a label that identifies*  
22 *the product as a drug as required by 21 C.F.R. § 201.66. The over-the-*  
23 *counter drug label includes: (1) A drug facts panel; or (2) a statement of*  
24 *the active ingredients with a list of those ingredients contained in the*  
25 *compound, substance or preparation. "Over-the-counter drugs" do not*  
26 *include grooming and hygiene products such as soaps, cleaning solutions,*  
27 *shampoo, toothpaste, antiperspirants and suntan lotions and screens.*

28 ~~(z)~~(oo) "Persons" means any individual, firm, copartnership, joint adventure,  
29 association, corporation, estate or trust, receiver or trustee, or any group or  
30 combination acting as a unit, and the plural as well as the singular number;  
31 and shall specifically mean any city or other political subdivision of the state  
32 of Kansas engaging in a business or providing a service specifically taxable  
33 under the provisions of this act.

34 ~~(aa)~~(pp) "Political subdivision" means any municipality, agency or  
35 subdivision of the state which is, or shall hereafter be, authorized to levy

1 taxes upon tangible property within the state or which certifies a levy to a  
2 municipality, agency or subdivision of the state which is, or shall hereafter be,  
3 authorized to levy taxes upon tangible property within the state. Such term  
4 also shall include any public building commission, housing, airport, port,  
5 metropolitan transit or similar authority established pursuant to law and the  
6 horsethief reservoir benefit district established pursuant to K.S.A.  
7 82a-2201, and amendments thereto.

8 ~~(bb)~~(qq) "Prescription" means an order, formula or recipe issued in any form  
9 of oral, written, electronic or other means of transmission by a duly licensed  
10 practitioner authorized by the laws of this state.

11 ~~(ee)~~(rr) "Prewritten computer software" means computer software, including  
12 prewritten upgrades, which is not designed and developed by the author or  
13 other creator to the specifications of a specific purchaser. The combining of  
14 two or more prewritten computer software programs or prewritten portions  
15 thereof does not cause the combination to be other than prewritten computer  
16 software. Prewritten computer software includes software designed and  
17 developed by the author or other creator to the specifications of a specific  
18 purchaser when it is sold to a person other than the purchaser. Where a person  
19 modifies or enhances computer software of which the person is not the author  
20 or creator, the person shall be deemed to be the author or creator only  
21 of such person's modifications or enhancements. Prewritten computer  
22 software or a prewritten portion thereof that is modified or enhanced  
23 to any degree, where such modification or enhancement is designed and  
24 developed to the specifications of a specific purchaser, remains prewritten  
25 computer software, except that where there is a reasonable, separately stated  
26 charge or an invoice or other statement of the price given to the purchaser  
27 for such modification or enhancement, such modification or enhancement  
28 shall not constitute prewritten computer software.

29 ~~(dd)~~(ss) "Property which is consumed" means tangible personal property  
30 which is essential or necessary to and which is used in the actual process of  
31 and consumed, depleted or dissipated within one year in: (1) The production,  
32 manufacture, processing, mining, drilling, refining or compounding of  
33 tangible personal property; (2) the providing of services; (3) the irrigation of  
34 crops, for sale in the regular course of business; or (4) the storage or  
35 processing of grain by a public grain warehouse or other grain storage

1 facility, and which is not reusable for such purpose. The following is a  
2 listing of tangible personal property, included by way of illustration but  
3 not of limitation, which qualifies as property which is consumed: (A)  
4 Insecticides, herbicides, germicides, pesticides, fungicides, fumigants,  
5 antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use  
6 in commercial or agricultural production, processing or storage of fruit,  
7 vegetables, feeds, seeds, grains, animals or animal products whether  
8 fed, injected, applied, combined with or otherwise used; (B) electricity, gas  
9 and water; and (C) petroleum products, lubricants, chemicals, solvents,  
10 reagents and catalysts.

11 ~~(ee)~~(tt) "Purchase price" applies to the measure subject to use tax and has the  
12 same meaning as sales price.

13 ~~(ff)~~(uu) "Purchaser" means a person to whom a sale of personal property is  
14 made or to whom a service is furnished.

15 ~~(gg)~~(vv) "Quasi-municipal corporation" means any county, township, school  
16 district, drainage district or any other governmental subdivision in the state  
17 of Kansas having authority to receive or hold moneys or funds.

18 ~~(hh)~~(ww) "Registered under this agreement" means registration by a seller  
19 with the member states under the central registration system provided in  
20 article IV of the agreement.

21 ~~(ii)~~(xx) "Retailer" means a seller regularly engaged in the business of selling,  
22 leasing or renting tangible personal property at retail or furnishing electrical  
23 energy, gas, water, services or entertainment, and selling only to the user or  
24 consumer and not for resale.

25 ~~(jj)~~(yy) "Retail sale" or "sale at retail" means any sale, lease or rental for any  
26 purpose other than for resale, sublease or subrent.

27 ~~(kk)~~(zz) "Sale" or "sales" means the exchange of tangible personal property,  
28 as well as the sale thereof for money, and every transaction, conditional  
29 or otherwise, for a consideration, constituting a sale, including the sale or  
30 furnishing of electrical energy, gas, water, services or entertainment  
31 taxable under the terms of this act and including, except as provided in the  
32 following provision, the sale of the use of tangible personal property by way  
33 of a lease, license to use or the rental thereof regardless of the method by  
34 which the title, possession or right to use the tangible personal property  
35 is transferred. The term "sale" or "sales" shall not mean the sale of the use of

1 any tangible personal property used as a dwelling by way of a lease or rental  
2 thereof for a term of more than 28 consecutive days.

3 ~~(H)~~(aaa) (1) "Sales or selling price" applies to the measure subject to  
4 sales tax and means the total amount of consideration, including cash,  
5 credit, property and services, for which personal property or services are sold,  
6 leased or rented, valued in money, whether received in money or otherwise,  
7 without any deduction for the following: (A) The seller's cost of the property  
8 sold; (B) the cost of materials used, labor or service cost, interest, losses, all  
9 costs of transportation to the seller, all taxes imposed on the seller and any  
10 other expense of the seller; (C) charges by the seller for any services necessary  
11 to complete the sale, other than delivery and installation charges; (D)  
12 delivery charges; and (E) installation charges. (2) "Sales or selling price"  
13 includes consideration received by the seller from third parties if: (A) The  
14 seller actually receives consideration from a party other than the purchaser  
15 and the consideration is directly related to a price reduction or discount on  
16 the sale; (B) the seller has an obligation to pass the price reduction or discount  
17 through to the purchaser; (C) the amount of the consideration attributable  
18 to the sale is fixed and determinable by the seller at the time of the sale  
19 of the item to the purchaser; and (D) one of the following criteria is met:  
20 (i) The purchaser presents a coupon, certificate or other documentation to  
21 the seller to claim a price reduction or discount where the coupon,  
22 certificate or documentation is authorized, distributed or granted by a  
23 third party with the understanding that the third party will reimburse any  
24 seller to whom the coupon, certificate or documentation is presented; (ii)  
25 the purchaser identifies to the seller that the purchaser is a member of a  
26 group or organization entitled to a price reduction or discount. A  
27 preferred customer card that is available to any patron does not constitute  
28 membership in such a group; or (iii) the price reduction or discount is  
29 identified as a third party price reduction or discount on the invoice  
30 received by the purchaser or on a coupon, certificate or other documentation  
31 presented by the purchaser. (3) "Sales or selling price" shall not include:  
32 (A) Discounts, including cash, term or coupons that are not reimbursed by a  
33 third party that are allowed by a seller and taken by a purchaser on a sale;  
34 (B) interest, financing and carrying charges from credit extended on the  
35 sale of personal property or services, if the amount is separately stated on the

1 invoice, bill of sale or similar document given to the purchaser; (C) any taxes  
2 legally imposed directly on the consumer that are separately stated on the  
3 invoice, bill of sale or similar document given to the purchaser; (D) the  
4 amount equal to the allowance given for the trade-in of property, if  
5 separately stated on the invoice, billing or similar document given to the  
6 purchaser; and (E) commencing on July 1, 2019, and ending on June 30,  
7 2021, cash rebates granted by a manufacturer to a purchaser or lessee of a  
8 new motor vehicle if paid directly to the retailer as a result of the original sale.

9 ~~(mm)~~(bbb) "Seller" means a person making sales, leases or rentals of personal  
10 property or services.

11 ~~(nn)~~(ccc) "Service" means those services described in and taxed under the  
12 provisions of K.S.A. 79-3603, and amendments thereto.

13 ~~(oo)~~(ddd) "Sourcing rules" means the rules set forth in K.S.A. 2019 38 Supp.  
14 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments  
15 thereto, which shall apply to identify and determine the state and local taxing  
16 jurisdiction sales or use taxes to pay, or collect and remit on a particular retail  
17 sale.

18 ~~(pp)~~(eee) "Tangible personal property" means personal property that can be  
19 seen, weighed, measured, felt or touched, or that is in any other manner  
20 perceptible to the senses. Tangible personal property includes electricity,  
21 water, gas, steam and prewritten computer software.

22 ~~(qq)~~(fff) "Taxpayer" means any person obligated to account to the director for  
23 taxes collected under the terms of this act.

24 (ggg) *"Telecommunications service" means the electronic transmission,*  
25 *conveyance or routing of voice, data, audio, video or any other information*  
26 *or signals to a point, or between or among points. The term*  
27 *"telecommunications service" includes such transmission, conveyance or*  
28 *routing in which computer processing applications are used to act on the*  
29 *form, code or protocol of the content for purposes of transmissions,*  
30 *conveyance or routing without regard to whether such service is referred*  
31 *to as voice over internet protocol service or is classified by the federal*  
32 *communications commission as enhanced or value added.*  
33 *"Telecommunications service" does not include: (1) Data processing and*  
34 *information services that allow data to be generated, acquired, stored,*  
35 *processed or retrieved and delivered by an electronic transmission to a*

1 purchaser when such purchaser's primary purpose for the underlying  
2 transaction is the processed data or information; (2) installation or  
3 maintenance of wiring or equipment on a customer's premises; (3) tangible  
4 personal property; (4) advertising, including, but not limited to, directory  
5 advertising; (5) billing and collection services provided to third parties; (6)  
6 internet access service; (7) radio and television audio and video  
7 programming services, regardless of the medium, including the  
8 furnishing of transmission, conveyance and routing of such services by  
9 the programming service provider. Radio and television audio and video  
10 programming services shall include, but not be limited to, cable service as  
11 defined in 47 U.S.C. §522(6) and audio and video programming  
12 services delivered by commercial mobile radio service providers, as defined  
13 in 47 C.F.R. § 20.3; (8) ancillary services; or (9) digital products delivered  
14 electronically, including, but not limited to, software, music, video, reading  
15 materials or ring tones.

16 ~~(ff)~~(hhh) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any  
17 other item that contains tobacco.

18 ~~(ss)~~ "Entity based exemption" means an exemption based on who purchases  
19 the product or who sells the product. An exemption that is available to all  
20 individuals shall not be considered an entity based exemption.

21 ~~(tt)~~ "Over the counter drug" means a drug that contains a label that  
22 identifies the product as a drug as required by 21 C.F.R. § 201.66. The  
23 over the counter drug label includes: (1) A drug facts panel; or (2) a  
24 statement of the active ingredients with a list of those ingredients  
25 contained in the compound, substance or preparation. Over the counter  
26 drugs do not include grooming and hygiene products such as soaps,  
27 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan lotions  
28 and screens.

29 ~~(uu)~~ "Ancillary services" means services that are associated with or incidental  
30 to the provision of telecommunications services, including, but not limited to,  
31 detailed telecommunications billing, directory assistance, vertical service and  
32 voice mail services.

33 ~~(vv)~~ "Conference bridging service" means an ancillary service that links two  
34 or more participants of an audio or video conference call and may include  
35 the provision of a telephone number. Conference bridging service does not

1 include the telecommunications services used to reach the conference bridge.  
2 ~~(ww) "Detailed telecommunications billing service" means an ancillary~~  
3 ~~service of separately stating information pertaining to individual calls on a~~  
4 ~~customer's billing statement.~~

5 ~~(xx) "Directory assistance" means an ancillary service of providing~~  
6 ~~telephone number information or address information, or both.~~

7 *(iii) "Value-added non-voice data service" means a service that otherwise*  
8 *meets the definition of telecommunications services in which computer*  
9 *processing applications are used to act on the form, content, code or*  
10 *protocol of the information or data primarily for a purpose other than*  
11 *transmission, conveyance or routing.*

12 ~~(yy)(jjj) "Vertical service" means an ancillary service that is offered in~~  
13 ~~connection with one or more telecommunications services, which offers~~  
14 ~~advanced calling features that allow customers to identify callers and to~~  
15 ~~manage multiple calls and call connections, including conference bridging~~  
16 ~~services.~~

17 ~~(zz)(lll) "Voice mail service" means an ancillary service that enables the~~  
18 ~~customer to store, send or receive recorded messages. Voice mail service does~~  
19 ~~not include any vertical services that the customer may be required to have~~  
20 ~~in order to utilize the voice mail service.~~

21 ~~(aaa) "Telecommunications service" means the electronic transmission,~~  
22 ~~conveyance or routing of voice, data, audio, video or any other information~~  
23 ~~or signals to a point, or between or among points. The term~~  
24 ~~telecommunications service includes such transmission, conveyance or~~  
25 ~~routing in which computer processing applications are used to act on the form,~~  
26 ~~code or protocol of the content for purposes of transmissions, conveyance~~  
27 ~~or routing without regard to whether such service is referred to as voice over~~  
28 ~~internet protocol services or is classified by the federal communications~~  
29 ~~commission as enhanced or value added. Telecommunications service~~  
30 ~~does not include: (1) Data processing and information services that allow~~  
31 ~~data to be generated, acquired, stored, processed or retrieved and~~  
32 ~~delivered by an electronic transmission to a purchaser where such~~  
33 ~~purchaser's primary purpose for the underlying transaction is the~~  
34 ~~processed data or information; (2) installation or maintenance of wiring~~  
35 ~~or equipment on a customer's premises; (3) tangible personal property; (4)~~



~~1 advertising, including, but not limited to, directory advertising; (5) billing  
2 and collection services provided to third parties; (6) internet access  
3 service; (7) radio and television audio and video programming services,  
4 regardless of the medium, including the furnishing of transmission,  
5 conveyance and routing of such services by the programming service  
6 provider. Radio and television audio and video programming services shall  
7 include, but not be limited to, cable service as defined in 47 U.S.C. §522(6)  
8 and audio and video programming services delivered by commercial mobile  
9 radio service providers, as defined in 47 C.F.R. § 20.3; (8) ancillary services;  
10 or (9) digital products delivered electronically, including, but not limited  
11 to, software, music, video, reading materials or ring tones.~~

~~(bbb)(mmm) "800 service" means a telecommunications service that allows  
12 a caller to dial a toll-free number without incurring a charge for the call. The  
13 service is typically marketed under the name 800, 855, 866, 877 and 888 toll-  
14 free calling, and any subsequent numbers designated by the federal  
15 communications commission.  
16~~

~~(eee)(nnn) "900 service" means an inbound toll telecommunications service  
17 purchased by a subscriber that allows the subscriber's customers to call in to  
18 the subscriber's prerecorded announcement or live service. 900 service does  
19 not include the charge for collection services provided by the seller of the  
20 telecommunications services to the subscriber, or service or product sold by  
21 the subscriber to the subscriber's customer. The service is typically marketed  
22 under the name 900 service, and any subsequent numbers designated by the  
23 federal communications commission.  
24~~

~~(ddd) "Value added non-voice data service" means a service that otherwise  
25 meets the definition of telecommunications services in which computer  
26 processing applications are used to act on the form, content, code or  
27 protocol of the information or data primarily for a purpose other than  
28 transmission, conveyance or routing.  
29~~

~~(eee) "International" means a telecommunications service that originates or  
30 terminates in the United States and terminates or originates outside the  
31 United States, respectively. United States includes the District of Columbia  
32 or a U.S. territory or possession.  
33~~

~~(fff) "Interstate" means a telecommunications service that originates in one  
34 United States state, or a United States territory or possession, and terminates  
35~~

1 ~~in a different United States state or a United States territory or possession.~~  
2 ~~(ggg) "Intrastate" means a telecommunications service that originates in~~  
3 ~~one United States state or a United States territory or possession, and~~  
4 ~~terminates in the same United States state or a United States territory or~~  
5 ~~possession.~~

6 Sec. 2. K.S.A. 2019 Supp. 79-3603 is hereby amended to read as follows:  
7 79-3603. For the privilege of engaging in the business of selling tangible  
8 personal property at retail in this state or rendering or furnishing any of the  
9 services taxable under this act, there is hereby levied and there shall be  
10 collected and paid a tax at the rate of 6.15%, and commencing July 1, 2015,  
11 at the rate of 6.5%. Within a redevelopment district established pursuant to  
12 K.S.A. 74-8921, and amendments thereto, there is hereby levied and there  
13 shall be collected and paid an additional tax at the rate of 2% until the earlier  
14 of the date the bonds issued to finance or refinance the redevelopment  
15 project have been paid in full or the final scheduled maturity of the first  
16 series of bonds issued to finance any part of the project upon:

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

19 (b) the gross receipts from intrastate, interstate or international  
20 telecommunications services and any ancillary services sourced to this  
21 state in accordance with K.S.A. 2019 Supp. 79-3673, and amendments  
22 thereto, except that telecommunications service does not include: (1) Any  
23 interstate or international 800 or 900 service; (2) any interstate or  
24 international private communications service as defined in K.S.A. 2019  
25 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data  
26 service; (4) any telecommunication service to a provider of  
27 Telecommunication services which will be used to render  
28 telecommunications services, including carrier access services; or (5) any  
29 service or transaction defined in this section among entities classified as  
30 members of an affiliated group as provided by section 1504 of the federal  
31 internal revenue code of 1986, as in effect on January 1, 2001;

32 (c) the gross receipts from the sale or furnishing of gas, water, electricity  
33 and heat, which sale is not otherwise exempt from taxation under the  
34 provisions of this act, and whether furnished by municipally or privately  
35 owned utilities, except that, on and after January 1, 2006, for sales of gas,

1 electricity and heat delivered through mains, lines or pipes to residential  
2 premises for noncommercial use by the occupant of such premises, and  
3 for agricultural use and also, for such use, all sales of propane gas, the  
4 state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood  
5 and other fuel sources for the production of heat or lighting for  
6 noncommercial use of an occupant of residential premises, the state rate shall  
7 be 0%, but such tax shall not be levied and collected upon the gross receipts  
8 from: (1) The sale of a rural water district benefit unit; (2) a water system  
9 impact fee, system enhancement fee or similar fee collected by a water  
10 supplier as a condition for establishing service; or (3) connection or  
11 reconnection fees collected by a water supplier;

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

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

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

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

31 (h) the gross receipts from the service of renting or leasing of tangible  
32 personal property except such tax shall not apply to the renting or leasing of  
33 machinery, equipment or other personal property owned by a city and  
34 purchased from the proceeds of industrial revenue bonds issued prior to July  
35 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-

1 1749, and amendments thereto, and any city or lessee renting or leasing such  
2 machinery, equipment or other personal property purchased with the proceeds  
3 of such bonds who shall have paid a tax under the provisions of this section  
4 upon sales made prior to July 1, 1973, shall be entitled to a refund from the  
5 sales tax refund fund of all taxes paid thereon;

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

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

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

13 (l) (1) except as otherwise provided by paragraph (2), the gross receipts  
14 received from the sales of tangible personal property to all contractors,  
15 subcontractors or repairmen for use by them in erecting structures, or  
16 building on, or otherwise improving, altering, or repairing real or personal  
17 property. (2) Any such contractor, subcontractor or repairman who  
18 maintains an inventory of such property both for sale at retail and for use by  
19 them for the purposes described by paragraph (1) shall be deemed a retailer  
20 with respect to purchases for and sales from such inventory, except that the  
21 gross receipts received from any such sale, other than a sale at retail, shall be  
22 equal to the total purchase price paid for such property and the tax imposed  
23 thereon shall be paid by the deemed retailer;

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

1 which spectators are charged an admission which is taxable pursuant to  
2 subsection (e);

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

13 (o) the gross receipts received from the isolated or occasional sale of  
14 motor vehicles or trailers but not including: (1) The transfer of motor  
15 vehicles or trailers by a person to a corporation or limited liability  
16 company solely in exchange for stock securities or membership interest in  
17 such corporation or limited liability company; (2) the transfer of motor  
18 vehicles or trailers by one corporation or limited liability company to  
19 another when all of the assets of such corporation or limited liability  
20 company are transferred to such other corporation or limited liability  
21 company; or (3) the sale of motor vehicles or trailers which are subject to  
22 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and  
23 amendments thereto, by an immediate family member to another  
24 immediate family member. For the purposes of paragraph (3), immediate  
25 family member means lineal ascendants or descendants, and their spouses.  
26 Any amount of sales tax paid pursuant to the Kansas retailers sales tax act on  
27 the isolated or occasional sale of motor vehicles or trailers on and after July  
28 1, 2004, which the base for computing the tax was the value pursuant to  
29 K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when such  
30 amount was higher than the amount of sales tax which would have been  
31 paid under the law as it existed on June 30, 2004, shall be refunded to the  
32 taxpayer pursuant to the procedure prescribed by this section. Such refund  
33 shall be in an amount equal to the difference between the amount of sales tax  
34 paid by the taxpayer and the amount of sales tax which would have been  
35 paid by the taxpayer under the law as it existed on June 30, 2004. Each

1 claim for a sales tax refund shall be verified and submitted not later than six  
2 months from the effective date of this act to the director of taxation upon  
3 forms furnished by the director and shall be accompanied by any additional  
4 documentation required by the director. The director shall review each claim  
5 and shall refund that amount of tax paid as provided by this act. All such  
6 refunds shall be paid from the sales tax refund fund, upon warrants of the  
7 director of accounts and reports pursuant to vouchers approved by the  
8 director of taxation or the director's designee. No refund for an amount less  
9 than \$10 shall be paid pursuant to this act. In determining the base for  
10 computing the tax on such isolated or occasional sale, the fair market value  
11 of any motor vehicle or trailer traded in by the purchaser to the seller may be  
12 deducted from the selling price;

13 (p) the gross receipts received for the service of installing or applying tangible  
14 personal property which when installed or applied is not being held for sale  
15 in the regular course of business, and whether or not such tangible personal  
16 property when installed or applied remains tangible personal property or  
17 becomes a part of real estate, except that no tax shall be imposed upon the  
18 service of installing or applying tangible personal property in connection  
19 with the original construction of a building or facility, the original  
20 construction, reconstruction, restoration, remodeling, renovation, repair or  
21 replacement of a residence or the construction, reconstruction, restoration,  
22 replacement or repair of a bridge or highway. For the purposes of this  
23 subsection: (1) "Original construction" shall mean the first or initial  
24 construction of a new building or facility. The term "original construction"  
25 shall include the addition of an entire room or floor to any existing building  
26 or facility, the completion of any unfinished portion of any existing  
27 building or facility and the restoration, reconstruction or replacement of a  
28 building, facility or utility structure damaged or destroyed by fire, flood,  
29 tornado, lightning, explosion, windstorm, ice loading and attendant  
30 winds, terrorism or earthquake, but such term, except with regard to a  
31 residence, shall not include replacement, remodeling, restoration,  
32 renovation or reconstruction under any other circumstances; (2) "building"  
33 shall mean only those enclosures within which individuals customarily are  
34 employed, or which are customarily used to house machinery, equipment or  
35 other property, and including the land improvements immediately surrounding

1 such building; (3) "facility" shall mean a mill, plant, refinery, oil or gas well,  
2 water well, feedlot or any conveyance, transmission or distribution line of  
3 any cooperative, nonprofit, membership corporation organized under or  
4 subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,  
5 or municipal or quasi-municipal corporation, including the land  
6 improvements immediately surrounding such facility; (4) "residence" shall  
7 mean only those enclosures within which individuals customarily live; (5)  
8 "utility structure" shall mean transmission and distribution lines owned by  
9 an independent transmission company or cooperative, the Kansas electric  
10 transmission authority or natural gas or electric public utility; and (6)  
11 "windstorm" shall mean straight line winds of at least 80 miles per hour as  
12 determined by a recognized meteorological reporting agency or organization;  
13 (q) the gross receipts received for the service of repairing, servicing,  
14 altering or maintaining tangible personal property which when such  
15 services are rendered is not being held for sale in the regular course of  
16 business, and whether or not any tangible personal property is transferred in  
17 connection therewith. The tax imposed by this subsection shall be applicable  
18 to the services of repairing, servicing, altering or maintaining an item of  
19 tangible personal property which has been and is fastened to, connected  
20 with or built into real property;  
21 (r) the gross receipts from fees or charges made under service or  
22 maintenance agreement contracts for services, charges for the providing of  
23 which are taxable under the provisions of subsection (p) or (q);  
24 (s) on and after January 1, 2005, the gross receipts received from the  
25 sale of prewritten computer software and the sale of the services of  
26 modifying, altering, updating or maintaining prewritten computer  
27 software, whether the prewritten computer software is installed or  
28 delivered electronically by tangible storage media physically transferred to  
29 the purchaser or by load and leave;  
30 (t) the gross receipts received for telephone answering services;  
31 (u) the gross receipts received from the sale of prepaid calling service and  
32 prepaid wireless calling service as defined in K.S.A. 2019 Supp. 79-3673,  
33 and amendments thereto;

1 (v) all sales of bingo cards, bingo faces and instant bingo tickets by licensees  
2 under K.S.A. 2019 Supp. 75-5171 et seq., and amendments thereto, shall be  
3 exempt from taxes imposed pursuant to this section; ~~and~~

4 (w) all sales of charitable raffle tickets in accordance with K.S.A. 2019  
5 Supp. 75-5171 et seq., and amendments thereto, shall be exempt from taxes  
6 imposed pursuant to this section; *and*

7 *(x) all sales of digital property, and subscription services thereto, regardless*  
8 *of whether: (1) The purchaser has the right to permanently use the property;*  
9 *(2) the purchaser's right to access or retain the property is not permanent; or*  
10 *(3) the purchaser's right of use is conditioned upon continued payment.*

11 Sec. 3 79-3602 and 79-3603 are hereby repealed.

12 Sec. 4 This act shall take effect and be in force from and after its publication  
13 in the statute book.