

Substitute for HOUSE BILL No. 2161

By Committee on Taxation

3-8

1 AN ACT concerning sales taxation; relating to situs of taxable
2 transactions; sourcing of certain retail sales; amending K.S.A. 2010
3 Supp. 12-191 and 79-3669 and repealing the existing sections.
4

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

6 New Section 1. (a) Notwithstanding the provisions of K.S.A. 2010
7 Supp. 79-3670, and amendments thereto, retail sales, excluding lease or
8 rental, of tangible personal property shall be sourced to the location
9 where the order is received by the seller if:

10 (1) The order is received by the seller in this state and receipt of the
11 product by the purchaser, or the purchaser's donee, designated as such by
12 the purchaser, occurs in this state;

13 (2) location where receipt of the product by the purchaser occurs is
14 determined pursuant to subsections (a)(2), (a)(3) and (a)(4) of K.S.A.
15 2010 Supp. 79-3670, and amendments thereto; and

16 (3) at the time the order is received, the recordkeeping system of the
17 seller used to calculate the proper amount of sales or use tax to be
18 imposed captures the location where the order is received.

19 (b) Sales sourced pursuant to this section shall be subject to the
20 following requirements:

21 (1) When the location where the order is received by the seller and
22 the location where the receipt of the product by the purchaser, or the
23 purchaser's donee, designated as such by the purchaser, occurs as
24 determined pursuant to subsections (a)(2), (a)(3) and (a)(4) of K.S.A.
25 2010 Supp. 79-3670, and amendments thereto, are in different states, the
26 sale shall be sourced pursuant to the provisions of K.S.A. 2010 Supp. 79-
27 3670, and amendments thereto;

28 (2) when the sale is sourced pursuant to this section to the location
29 where the order is received by the seller, only the sales tax in effect for
30 the location where the order is received by the seller applies. No
31 additional sales or use tax based on the location where the product is
32 delivered to the purchaser shall apply. The purchaser shall not be entitled
33 to any refund if the combined state and local rate or rates at the location
34 where the product is received by the purchaser is lower than the rate
35 where the order is received by the seller;

36 (3) a seller is not required to utilize a recordkeeping system which

1 captures the location where an order is received to calculate the proper
2 amount of sales or use tax to be imposed;

3 (4) a purchaser shall have no additional liability for tax, penalty or
4 interest on a sale for which the purchaser remits tax to the seller in the
5 amount invoiced by the seller if such invoice amount is calculated at
6 either the rate applicable to the location where receipt by the purchaser
7 occurs or at the rate applicable to the location where the order is received
8 by the seller. A purchaser may rely on a written representation by the
9 seller as to the location where the order for such sale was received by the
10 seller. When the purchaser does not have a written representation by the
11 seller as to the location where the order for such sale was received by the
12 seller, the purchaser may use a location indicated by a business address
13 for the seller that is available from the business records of the purchaser
14 that are maintained in the ordinary course of the purchaser's business to
15 determine the rate applicable to the location where the order was
16 received;

17 (5) the location where the order is received by or on behalf of the
18 seller means the physical location of a seller or third party such as an
19 established outlet, office location or automated order receipt system
20 operated by or on behalf of the seller where an order is initially received
21 by or on behalf of the seller and not where the order may be subsequently
22 accepted, completed or fulfilled. An order is received when all of the
23 information necessary to the determination whether the order can be
24 accepted has been received by or on behalf of the seller. The location
25 from which a product is shipped shall not be used in determining the
26 location where the order is received by the seller;

27 (6) purchasers remitting sales and use tax pursuant to a direct pay
28 permit shall remit tax at the rate in effect for the location where receipt of
29 the product by the purchaser occurs or if the product is a service, where
30 the product is first used;

31 (7) when taxable services are sold with tangible personal property
32 pursuant to a single contract or in the same transaction, are billed on the
33 same billing statement or statements, and, because of the application of
34 this section, would be sourced to different jurisdictions, such transaction
35 shall have a single situs, for sourcing purposes, which shall be the
36 location where the seller received the order; and

37 (8) the secretary of revenue shall inform the governing board of the
38 streamlined sales and use tax agreement of the enactment of this sourcing
39 provision.

40 New Sec. 2. (a) Notwithstanding the provisions of K.S.A. 2010
41 Supp. 79-3670 and 79-3672, and amendments thereto, the sale of all
42 direct mail delivered or distributed from a location within this state and
43 delivered or distributed to a location within this state shall be sourced

1 pursuant to the provisions of this section.

2 (b) If the purchaser provides the seller with a direct pay permit or a
3 certificate of exemption claiming direct mail, the seller, in the absence of
4 bad faith, is relieved of all obligations to collect, pay, or remit the
5 applicable tax on any transaction involving direct mail. The purchaser
6 must report and pay any applicable tax due. A certificate of exemption
7 claiming direct mail shall remain in effect for all future sales of direct
8 mail by the seller to the purchaser until it is revoked in writing.

9 (c) Except as provided in subsection (b) and this subsection, the
10 seller shall collect the tax according to subsection (a)(5) of K.S.A. 2010
11 Supp. 79-3670, and amendments thereto. To the extent the seller knows
12 that a portion of the sale of direct mail will be delivered or distributed to a
13 location in another state, the seller shall collect the tax on that portion
14 according to K.S.A. 2010 Supp. 79-3672, and amendments thereto.

15 (d) Notwithstanding the provisions of subsection (c), a seller may
16 elect to use the provisions of K.S.A. 2010 Supp. 79-3672, and
17 amendments thereto, to source all sales of advertising and promotional
18 direct mail.

19 (e) A purchaser whose direct mail is sourced under the provisions of
20 subsection (c) shall owe no additional sales or use tax to this state where
21 the purchaser uses or delivers the direct mail in this state.

22 Sec. 3. K.S.A. 2010 Supp. 12-191 is hereby amended to read as
23 follows: 12-191. All retail transactions consummated within a county or
24 city having a retail sales tax, which transactions are subject to the Kansas
25 retailers' sales tax, shall also be subject to such county or city retail sales
26 tax. Except as hereinafter provided, all retail sales, for the purpose of this
27 act, shall be considered to have been consummated at the location
28 determined by the sourcing rules as provided in K.S.A. 2010 Supp. ~~79-~~
29 ~~3670~~79-3669, and amendments thereto. The retail sales or transfer of
30 watercraft, modular homes, manufactured homes or mobile homes, shall
31 be considered consummated at the place of business of the retailer and
32 sourced to such location. The retail sale, excluding the lease or rental, of
33 motor vehicles, trailers, semi-trailers or aircraft that do not qualify as
34 transportation equipment, as defined in subsection (d) of K.S.A. 2010
35 Supp. 79-3670, and amendments thereto, shall be considered
36 consummated at the place of business of the retailer and sourced to such
37 location. The isolated or occasional sale of any motor vehicle or trailer
38 shall be considered consummated at the taxing jurisdiction where the sale
39 is made. If the sale negotiations occurred in different cities or counties,
40 the situs of the sale for local sales tax purposes shall be the place where
41 the motor vehicle or trailer was kept at the time negotiations were first
42 entered into. In the event the place of business of a retailer is doubtful the
43 place or places at which the retail sales are consummated for the purposes

1 of this act shall be determined under rules and regulations adopted by the
2 secretary of revenue which rules and regulations shall be considered with
3 state and federal law insofar as applicable. The director of taxation is
4 hereby authorized to request and receive from any retailer or from any
5 city or county levying the tax such information as may be reasonably
6 necessary to determine the liability of retailers for any county or city sales
7 tax. The collection of any sales tax of a county or city approved at any
8 election shall commence on the first day of the calendar quarter next
9 following the 90th day after the date that the city or county has provided
10 written notice to the director of taxation of the election authorizing the
11 levy of such tax. The collection of any such sales tax applicable to printed
12 catalog purchases wherein the purchaser computed the tax based upon
13 local tax rates published in the catalog, shall not commence until the first
14 day of the calendar quarter next following the 150th day after the date
15 that the city or county has provided written notice to the director of
16 taxation of the election authorizing the levy of such tax. The director of
17 taxation shall provide notice to sellers of such taxes within 30 days after
18 receiving such notice from the city or county.

19 A city retailers' sales tax shall not become effective within any area
20 annexed by a city levying such tax until the first day of the calendar
21 quarter next following the 90th day after the date that the governing body
22 of such city provided the state department of revenue with a certified
23 copy of the annexation ordinance and a map of the city detailing the
24 annexed area. The director of taxation shall provide notice to sellers of
25 such tax within 30 days after receiving such notice from the city or
26 county.

27 Whenever any sales tax, imposed by any city or county under the
28 provisions of this act, shall become effective, at any time prior to the time
29 that revenue derived therefrom may be budgeted for expenditure in such
30 year, such revenue shall be credited to the funds of the taxing subdivision
31 or subdivisions and shall be carried forward to the credit of such funds for
32 the ensuing budget year in the manner provided for carrying forward
33 balances remaining in such funds at the end of a budget year.

34 Sec. 4. K.S.A. 2010 Supp. 79-3669 is hereby amended to read as
35 follows: 79-3669. (a) The retail sale of a product shall be sourced in
36 accordance with K.S.A. 2010 Supp. 79-3670, 79-3672, *section 1 and*
37 *section 2*, and amendments thereto, *whichever is applicable*. The
38 provisions of K.S.A. 2010 Supp. 79-3670, and amendments thereto, apply
39 regardless of the characterization of a product as tangible personal
40 property, a digital good or a service. The provisions of K.S.A 2010 Supp.
41 79-3670, and amendments thereto, only apply to determine a seller's
42 obligation to pay or collect and remit a sales or use tax with respect to the
43 seller's retail sale of a product. These provisions do not affect the

1 obligation of a purchaser or lessee to remit tax on the use of the product
2 to the taxing jurisdictions of that use.

3 (b) K.S.A. 2010 Supp. 79-3670, and amendments thereto, does not
4 apply to sales or use taxes levied on the following: (1) The retail sale or
5 transfer of water craft, modular homes, manufactured homes or mobile
6 homes. The retail sale of these items shall be sourced according to K.S.A.
7 12-191 and amendments thereto;

8 (2) the retail sales, excluding lease or rental, of motor vehicles,
9 trailers, semi-trailers or aircraft that do not qualify as transportation
10 equipment, as defined in subsection (d) of K.S.A. 2010 Supp. 79-3670,
11 and amendments thereto. The retail sale of these items shall be sourced
12 according to K.S.A. 12-191, and amendments thereto, and the lease or
13 rental of these items must be sourced according to subsection (c) of
14 K.S.A. 2010 Supp. 79-3670, and amendments thereto; and

15 (3) telecommunications services, as set out in K.S.A. 2010 Supp. 79-
16 3673, and amendments thereto, and ancillary services, as defined in
17 K.S.A. 79-3602, and amendments thereto, shall be sourced in accordance
18 with K.S.A. 2010 Supp. 79-3673, and amendments thereto.

19 Sec. 5. K.S.A. 2010 Supp. 12-191 and 79-3669 are hereby repealed.

20 Sec. 6. This act shall take effect and be in force from and after its
21 publication in the statute book.
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