

79-3686. Same; bundled transactions. (a) As used in this section: "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where: (1) The products are otherwise distinct and identifiable; and (2) the products are sold for one non-itemized price. "Bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this subsection, "distinct and identifiable products" does not include: (1) Packaging such as containers, boxes, sacks, bags and bottles, or other materials such as wrapping, labels, tags and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(2) a product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; and

(3) items included in the definition of sales price pursuant to K.S.A. 79-3602, and amendments thereto. The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

(b) A transaction that otherwise meets the definition of a bundled transaction as defined in subsection (a), is not a "bundled transaction" if it is:

(1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(2) the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(3) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.

As used in this subsection, de minimis means the seller's purchase price or sales price of the taxable products is 10% or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(4) the retail sale of exempt tangible personal property and taxable tangible personal property where:

(A) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and

(B) the seller's purchase price or sales price of the taxable tangible personal property is 50% or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50% determination for a transaction.

(b) [(c)] When the provider of a non-taxable service delivers to a client or customer tangible personal property that is essential to the use of the service, is provided exclusively in connection with the service and the true object of the transaction is the service pursuant to subsection (b)(1), the service provider shall be considered the consumer of those items of tangible personal property and shall pay or accrue sales or use tax on them at the time of purchase.

(c) [(d)] The gross receipts received from a bundled transaction are taxable, when one or more of the products included in such transaction is taxable under K.S.A. 79-3603, and amendments thereto. For a bundled transaction that includes any telecommunication service, ancillary service, internet access or audio or video programming service, if the price is attributable to products that are taxable and products that are nontaxable, the portion of price attributable to the nontaxable products shall be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes. The provisions of this subsection shall apply unless otherwise provided by federal law.

History: L. 2007, ch. 155, § 17; July 1.