

HOUSE BILL No. 2177

By Committee on Taxation

1-26

1 AN ACT concerning sales and compensating use tax; relating to sourcing
2 of sales, origin sourcing; amending K.S.A. 2016 Supp. 79-3669 and 79-
3 3670 and repealing the existing sections.

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

6 New Section 1. (a) Beginning July 1, 2017, retail sales, excluding the
7 lease or rental, of tangible personal property or digital goods shall be
8 sourced to the location where the seller receives an order for the sale of
9 such property or goods if:

10 (1) The seller receives the order in this state and the purchaser
11 receives the property or goods in this state;

12 (2) the location where the consumer receives the property or goods is
13 determined under KSA 2016 Supp. 79-3670(a)(2) through (4), and
14 amendments thereto; and

15 (3) the record-keeping system used by the seller to calculate the tax
16 imposed captures the location where the order is received at the time the
17 order is received.

18 (b) (1) For the purposes of this section, the location where a seller
19 receives an order is a physical location of the seller or a third party where
20 an order is initially received by or on behalf of the seller.

21 (2) A physical location of a seller or third party includes the
22 following, if operated by or on behalf of the seller:

23 (A) An automated order receipt system;

24 (B) an office; or

25 (C) an outlet.

26 (3) The location where a seller receives an order does not include the
27 location:

28 (A) Where the order may be subsequently accepted, completed or
29 fulfilled; or

30 (B) from which tangible personal property or a product transferred
31 electronically is shipped.

32 (4) An order is received when all of the information from the
33 purchaser necessary to the determination of whether the order can be
34 accepted has been received by or on behalf of the seller.

35 (b) (1) A purchaser is not liable for a tax, penalty or interest on a sale
36 for which the purchaser remits a tax under the Kansas retailers' sales tax

1 act or the Kansas compensating tax to the seller in the amount the seller
2 invoices if the amount is calculated at the total tax rate applicable to the
3 location where the seller receives the order or at the rate applicable to the
4 location where receipt by the purchaser occurs.

5 (2) A purchaser may rely on a written representation by the seller as
6 to the location where the order for such sale was received by the seller. If a
7 purchaser does not have a written representation by the seller as to the
8 location where the order for such sale was received by the seller, the
9 purchaser may use a location indicated by a business address for the seller
10 that is available from business records of the purchaser that are maintained
11 in the ordinary course of the purchaser's business to determine the rate
12 applicable to the location where the order was received.

13 (c) For the purposes of this section, if services subject to taxation
14 under the Kansas retailers' sales tax act or the Kansas compensating tax are
15 sold with tangible personal property or digital goods pursuant to a single
16 contract or in the same transaction, the services are billed on the same
17 billing statement or invoice, and, because of the application of subsection
18 (a), the transaction would be sourced to more than one jurisdiction, the
19 situs of the transaction shall be the location where the order is received by
20 or on behalf of the seller.

21 Sec. 2. K.S.A. 2016 Supp. 79-3669 is hereby amended to read as
22 follows: 79-3669. (a) The retail sale of a product shall be sourced in
23 accordance with K.S.A. 2016 Supp. 79-3670 *and section 1*, and
24 amendments thereto. The provisions of K.S.A. 2016 Supp. 79-3670 *and*
25 *section 1*, and amendments thereto, apply regardless of the characterization
26 of a product as tangible personal property, a digital good or a service. The
27 provisions of K.S.A. 2016 Supp. 79-3670 *and section 1*, and amendments
28 thereto, only apply to determine a seller's obligation to pay or collect and
29 remit a sales or use tax with respect to the seller's retail sale of a product.
30 These provisions do not affect the obligation of a purchaser or lessee to
31 remit tax on the use of the product to the taxing jurisdictions of that use.

32 (b) K.S.A. 2016 Supp. 79-3670 *and section 1*, and amendments
33 thereto, does not apply to sales or use taxes levied on the following: (1)
34 The retail sale or transfer of water craft, modular homes, manufactured
35 homes or mobile homes. The retail sale of these items shall be sourced
36 according to K.S.A. 12-191, and amendments thereto;

37 (2) the retail sales, excluding lease or rental, of motor vehicles,
38 trailers, semi-trailers or aircraft that do not qualify as transportation
39 equipment, as defined in ~~subsection (d)~~ of K.S.A. 2016 Supp. 79-3670(d),
40 and amendments thereto. The retail sale of these items shall be sourced
41 according to K.S.A. 12-191, and amendments thereto, and the lease or
42 rental of these items must be sourced according to ~~subsection (e)~~ of K.S.A.
43 2016 Supp. 79-3670(c), and amendments thereto; and

1 (3) telecommunications services, as set out in K.S.A. 2016 Supp. 79-
2 3673, and amendments thereto, and ancillary services, as defined in K.S.A.
3 79-3602, and amendments thereto, shall be sourced in accordance with
4 K.S.A. 2016 Supp. 79-3673, and amendments thereto.

5 Sec. 3. K.S.A. 2016 Supp. 79-3670 is hereby amended to read as
6 follows: 79-3670. (a) *Except as otherwise provided by section 1, and*
7 *amendments thereto*, the retail sale, excluding lease or rental, of a product
8 shall be sourced as follows: (1) When the product is received by the
9 purchaser at a business location of the seller, the sale is sourced to that
10 business location;

11 (2) when the product is not received by the purchaser at a business
12 location of the seller, the sale is sourced to the location where receipt by
13 the purchaser, or the purchaser's donee, designated as such by the
14 purchaser, occurs, including the location indicated by instructions for
15 delivery to the purchaser or donee, known to the seller;

16 (3) when subsection (a)(1) and (a)(2) do not apply, the sale is sourced
17 to the location indicated by an address for the purchaser that is available
18 from the business records of the seller that are maintained in the ordinary
19 course of the seller's business when use of this address does not constitute
20 bad faith;

21 (4) when subsections (a)(1), (a)(2) and (a)(3) do not apply, the sale is
22 sourced to the location indicated by an address for the purchaser obtained
23 during the consummation of the sale, including the address of a purchaser's
24 payment instrument, if no other address is available, when use of this
25 address does not constitute bad faith;

26 (5) when none of the previous rules of subsection (a)(1), (a)(2), (a)(3)
27 or (a)(4) apply, including the circumstance in which the seller is without
28 sufficient information to apply the previous rules, then the location will be
29 determined by the address from which tangible personal property was
30 shipped, from which the digital good or the computer software delivered
31 electronically was first available for transmission by the seller, or from
32 which the service was provided, disregarding for these purposes any
33 location that merely provided the digital transfer of the product sold.

34 (b) The lease or rental of tangible personal property, other than
35 property identified in subsection (c) or (d), shall be sourced as follows: (1)
36 For a lease or rental that requires recurring periodic payments, the first
37 periodic payment is sourced the same as a retail sale in accordance with
38 the provisions of subsection (a). Periodic payments made subsequent to the
39 first payment are sourced to the primary property location for each period
40 covered by the payment. The primary property location shall be as
41 indicated by an address for the property provided by the lessee that is
42 available to the lessor from its records maintained in the ordinary course of
43 business, when use of this address does not constitute bad faith. The

1 property location shall not be altered by intermittent use at different
2 locations, such as use of business property that accompanies employees on
3 business trips and service calls;

4 (2) for a lease or rental that does not require recurring periodic
5 payments, the payment is sourced the same as a retail sale in accordance
6 with the provisions of subsection (a); and

7 (3) this subsection does not affect the imposition or computation of
8 sales or use tax on leases or rentals based on a lump sum or accelerated
9 basis, or on the acquisition of property for lease.

10 (c) The lease or rental of motor vehicles, trailers, semi-trailers or
11 aircraft that do not qualify as transportation equipment, as defined in
12 subsection (d), shall be sourced as follows: (1) For a lease or rental that
13 requires recurring periodic payments, each periodic payment is sourced to
14 the primary property location. The primary property location shall be as
15 indicated by an address for the property provided by the lessee that is
16 available to the lessor from its records maintained in the ordinary course of
17 business, when use of this address does not constitute bad faith. This
18 location shall not be altered by intermittent use at different locations;

19 (2) for a lease or rental that does not require recurring periodic
20 payments, the payment is sourced the same as a retail sale in accordance
21 with the provisions of subsection (a); and

22 (3) this subsection does not affect the imposition or computation of
23 sales or use tax on leases or rentals based on a lump sum or accelerated
24 basis or on the acquisition of property for lease.

25 (d) The retail sale, including lease or rental, of transportation
26 equipment shall be sourced the same as a retail sale in accordance with the
27 provisions of subsection (a), notwithstanding the exclusion of lease or
28 rental in subsection (a). "Transportation equipment" means any of the
29 following: (1) Locomotives and railcars that are utilized for the carriage of
30 persons or property in interstate commerce;

31 (2) trucks and truck-tractors with a gross vehicle weight rating
32 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger
33 buses that are: (A) Registered through the international registration plan;
34 and

35 (B) operated under authority of a carrier authorized and certificated
36 by the United States department of transportation or another federal or a
37 foreign authority to engage in the carriage of persons or property in
38 interstate or foreign commerce;

39 (3) aircraft that are operated by air carriers authorized and certificated
40 by the United States department of transportation or another federal or a
41 foreign authority to engage in the carriage of persons or property in
42 interstate or foreign commerce; and

43 (4) containers designed for use on and component parts attached or

1 secured on the items set forth in subsection (d)(1), (d)(2) and (d)(3).

2 (e) As used in this section, the terms "receive" and "receipt" mean:

3 (1) Taking possession of tangible personal property;

4 (2) making first use of services; or

5 (3) taking possession or making first use of digital goods, whichever
6 comes first. The terms receive and receipt do not include possession by a
7 shipping company on behalf of the purchaser.

8 Sec. 4. K.S.A. 2016 Supp. 79-3669 and 79-3670 are hereby repealed.

9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.