

## HOUSE BILL No. 2349

By Committee on Taxation

2-14

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1 AN ACT concerning sales and compensating use tax; relating to remote  
2 sellers; required collection and remittance of tax; amending K.S.A.  
3 2018 Supp. 79-3702 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 79-3702 is hereby amended to read as  
7 follows: 79-3702. For the purposes of this act: (a) "Purchase price" means  
8 the consideration paid or given or contracted to be paid or given by any  
9 person to the seller of an article of tangible personal property for the article  
10 purchased. The term shall include, in addition to the consideration paid or  
11 given or contracted to be paid or given, the actual cost of transportation  
12 from the place where the article was purchased to the person using the  
13 same in this state. If a cash discount is allowed and taken on the sale it  
14 shall be deducted in arriving at the purchase price.

15 (b) The meaning ascribed to words and phrases in K.S.A. 79-3602,  
16 and amendments thereto, insofar as is practicable, shall be applicable  
17 herein unless otherwise provided. The provisions of K.S.A. 79-3601 ~~to~~  
18 *through 79-3625, inclusive, 79-3650, and amendments thereto, and K.S.A.*  
19 *2018 Supp. 79-3693 and 79-3694, and amendments thereto, relating to*  
20 *enforcement, collection and administration, insofar as practicable, shall*  
21 *have full force and effect with respect to taxes imposed under the*  
22 *provisions of this act.*

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

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

32 (e) "Storage" and "use" do not include the keeping, retaining or  
33 exercising of any right or power over tangible personal property shipped or  
34 brought into this state for the purpose of subsequently transporting it  
35 outside the state for use thereafter solely outside the state, or for the  
36 purpose of being processed, fabricated, or manufactured into, attached to

1 or incorporated into, other tangible personal property to be transported  
2 outside the state and thereafter used solely outside the state.

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

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

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

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

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

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

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

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

42 (G) *for any retailer that does not satisfy the requirements contained*  
43 *in subparagraphs (A) through (F), such retailer shall be a retailer doing*

1 *business in this state, if, during the preceding calendar year, the retailer*  
2 *had any gross receipts from sales by the retailer to customers in this state.*

3 (2) A retailer shall be presumed to be doing business in this state if  
4 any of the following occur:

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

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

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

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

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

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

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

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

30 (B) Any affiliated person conducting activities in this state described  
31 in subparagraph (A) or ~~(C)~~ (D) has nexus with this state sufficient to  
32 require such person to collect and remit taxes under the provisions of the  
33 constitution and laws of the United States if such person were making  
34 taxable retail sales of tangible personal property or services in this state.

35 (C) *For any retailer who, during the preceding calendar year, has*  
36 *any gross receipts from sales by the retailer to customers in this state, such*  
37 *retailer shall have nexus with this state requiring such person to collect*  
38 *and remit taxes.*

39 ~~(C)~~(D) The retailer enters into an agreement with one or more  
40 residents of this state under which the resident, for a commission or other  
41 consideration, directly or indirectly refers potential customers, whether by  
42 a link or an internet website, by telemarketing, by an in-person oral  
43 presentation, or otherwise, to the retailer, if the cumulative gross receipts

1 from sales by the retailer to customers in the state who are referred to the  
2 retailer by all residents with this type of an agreement with the retailer is in  
3 excess of \$10,000 during the preceding 12 months. This presumption may  
4 be rebutted by submitting proof that the residents with whom the retailer  
5 has an agreement did not engage in any activity within the state that was  
6 significantly associated with the retailer's ability to establish or maintain  
7 the retailer's market in the state during the preceding 12 months. Such  
8 proof may consist of sworn written statements from all of the residents  
9 with whom the retailer has an agreement stating that they did not engage in  
10 any solicitation in the state on behalf of the retailer during the preceding  
11 year, provided that such statements were provided and obtained in good  
12 faith. This subparagraph shall take effect 90 days after the enactment of  
13 this statute and shall apply to sales made and uses occurring on or after the  
14 effective date of this subparagraph and without regard to the date the  
15 retailer and the resident entered into the agreement described in this  
16 subparagraph. The term "preceding 12 months" as used in this  
17 subparagraph includes the 12 months commencing prior to the effective  
18 date of this subparagraph.

19 ~~(D)~~(E) The presumptions in subparagraphs (A) and (B) may be  
20 rebutted by demonstrating that the activities of the person or affiliated  
21 person in the state are not significantly associated with the retailer's ability  
22 to establish or maintain a market in this state for the retailer's sales.

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

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

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

35 Sec. 2. K.S.A. 2018 Supp. 79-3702 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after  
37 January 1, 2020, and its publication in the statute book.