

SENATE BILL No. 466

By Committee on Federal and State Affairs

1-29

AN ACT concerning alcoholic beverages; relating to the gallonage tax; amending K.S.A. 2001 Supp. 41-501 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "Malt product" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private

1 citizen outside the borders of the United States and is brought into this
2 state by the private citizen in such person's personal possession for such
3 person's own personal use and not for sale or resale, such import is lawful
4 and no tax payment shall be due thereon.

5 (c) Manufacturers, microbreweries, farm wineries or distributors at
6 wholesale of alcoholic liquor or cereal malt beverage shall be exempt from
7 the payment of the gallonage tax imposed on alcoholic liquor and cereal
8 malt beverage, upon satisfactory proof, including bills of lading furnished
9 to the director by affidavit or otherwise as the director requires, that the
10 liquor or cereal malt beverage was manufactured in this state but was
11 shipped out of the state for sale and consumption outside the state.

12 (d) Wines manufactured or imported solely and exclusively for sac-
13 ramental purposes and uses shall not be subject to the tax provided for
14 by this section.

15 (e) The tax provided for by this section is not imposed upon:

16 (1) Any alcohol or wine, whether manufactured in or imported into
17 this state, when sold to a nonbeverage user licensed by the state, for use
18 in the manufacture of any of the following when they are unfit for bev-
19 erage purposes: Patent and proprietary medicines and medicinal, anti-
20 septic and toilet preparations; flavoring extracts and syrups and food prod-
21 ucts; scientific, industrial and chemical products; or scientific, chemical,
22 experimental or mechanical purposes; or

23 (2) the privilege of engaging in any business of interstate commerce
24 or otherwise, which business may not be made the subject of taxation by
25 this state under the constitution and statutes of the United States.

26 (f) The tax imposed by this section shall be in addition to all other
27 taxes imposed by the state of Kansas or by any municipal corporation or
28 political subdivision thereof.

29 (g) Retail sales of alcoholic liquor, sales of beer to consumers by mi-
30 crobreweries and sales of wine to consumers by farm wineries shall not
31 be subject to the tax imposed by the Kansas retailers' sales tax act but
32 shall be subject to the enforcement tax provided for in this act.

33 (h) Notwithstanding any ordinance to the contrary, no city shall im-
34 pose an occupation or privilege tax on the business of any person, firm
35 or corporation licensed as a manufacturer, distributor, microbrewery,
36 farm winery, retailer or nonbeverage user under this act and doing busi-
37 ness within the boundaries of the city except as specifically authorized by
38 K.S.A. 41-310, and amendments thereto.

39 (i) The director shall collect the taxes imposed by this section and
40 shall account for and remit all moneys collected from the tax to the state
41 treasurer in accordance with the provisions of K.S.A. 75-4215, and
42 amendments thereto. Upon receipt of each such remittance, the state
43 treasurer shall deposit the entire amount in the state treasury and the

1 state treasurer shall credit $\frac{1}{10}$ of the moneys collected from taxes imposed
2 upon alcohol and spirits under subsection (b)(1) to the community alco-
3 holism and intoxication programs fund created by K.S.A. 41-1126, and
4 amendments thereto, and shall credit the balance of the moneys collected
5 to the state general fund.

6 (j) If any alcoholic liquor manufactured in or imported into this state
7 is sold to a licensed manufacturer or distributor of this state to be used
8 solely as an ingredient in the manufacture of any beverage for human
9 consumption, the tax imposed upon the manufacturer or distributor shall
10 be reduced by the amount of the taxes which have been paid under this
11 section as to the alcoholic liquor so used.

12 (k) The tax provided for by this section is not imposed upon alcohol
13 or wine used by any school or college for scientific, chemical, experimen-
14 tal or mechanical purposes or by hospitals, sanatoria or other institutions
15 caring for the sick. Any school, college, hospital, sanatorium or other
16 institution caring for the sick may import alcohol or wine for scientific,
17 chemical, experimental, mechanical or medicinal purposes by making ap-
18 plication to the director for a permit to import it and receiving such a
19 permit. Application for the permit shall be on a form prescribed and
20 furnished by the director, and a separate permit shall be required for
21 each purchase of alcohol or wine. A fee of \$2 shall accompany each ap-
22 plication. All permits shall be issued in triplicate to the applicant and shall
23 be under the seal of the office of the director. Two copies of the permit
24 shall be forwarded by the applicant to the microbrewery, farm winery,
25 manufacturer or distributor from which the alcohol or wine is purchased,
26 and the microbrewery, farm winery, manufacturer or distributor shall
27 return to the office of the director one copy of the permit with its shipping
28 affidavit and invoice. Within 10 days after receipt of any alcohol or wine,
29 the school, college, hospital or sanatorium ordering it shall file a report
30 in the office of the director upon forms furnished by the director, showing
31 the amount of alcohol or wine received, the place where it is to be stored,
32 from whom it was received, the purpose for which it is to be used and
33 such other information as required by the director. Any school, college,
34 hospital, sanatorium or institution caring for the sick, which complies with
35 the provisions of this subsection, shall not be required to have any other
36 license to purchase alcohol or wine from a microbrewery, farm winery,
37 manufacturer or distributor.

38 (l) *The amount of tax imposed by this section shall be assessed within*
39 *three years after the return is filed. Except in the case of fraud, no pro-*
40 *ceedings in court for the collection of such taxes shall be begun after the*
41 *expiration of such three-year period. In the case of a false or fraudulent*
42 *return with intent to evade tax, the tax may be assessed or a proceeding*
43 *in court for collection of such tax may be begun at any time, within two*

1 years from the discovery of such fraud. No refund or credit shall be al-
2 lowed by the director after three years from the date of payment of the
3 tax as provided in this act unless before the expiration of such period a
4 claim therefor is filed by the taxpayer. No suit or action to recover on any
5 claim for refund shall be commenced until after the expiration of six
6 months from the date of filing a claim therefor with the director. Before
7 the expiration of time prescribed in this section for the assessment of
8 additional tax or the filing of a claim for refund, the director may enter
9 into an agreement in writing with the taxpayer consenting to the extension
10 of the periods of limitations for the assessment of tax or for the filing of a
11 claim for refund, at any time prior to the expiration of the period of
12 limitations. The period so agreed upon may be extended by subsequent
13 agreements in writing made before the expiration of the previously agreed
14 upon period.

15 New Sec. 2. (a) If any taxpayer fails to pay the tax imposed by K.S.A.
16 41-501, 41-501a and 41-502, and amendments thereto, at the time re-
17 quired by or under the provisions of K.S.A. 41-502, and amendments
18 thereto, there shall be added to the unpaid balance of the tax, interest at
19 the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and
20 amendments thereto, from the date the tax was due until paid.

21 (b) Except as provided herein, if any taxpayer fails to file a return or
22 pay the tax if one is due, at the time required by K.S.A. 41-501, 41-501a
23 and 41-502, and amendments thereto, there shall be added to the tax an
24 additional amount equal to 1% of the unpaid balance of the tax due for
25 each month or fraction thereof during which such failure continues, not
26 exceeding 24% in the aggregate, plus interest at the rate prescribed by
27 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
28 the tax was due until paid. If an assessment is issued following an audit
29 for any period for which a return was filed by the taxpayer and all of the
30 tax was paid pursuant to such return, a penalty shall be imposed for the
31 period included in the assessment in an amount of 1% per month not
32 exceeding 10% of the unpaid balance of tax due shown in the notice of
33 assessment. If after review of a return for any period included in the
34 assessment, the secretary or secretary's designee determines that the un-
35 derpayment of tax was due to the failure of the taxpayer to make a rea-
36 sonable attempt to comply with the provisions of this act, such penalty
37 shall be imposed for the period included in the assessment in the amount
38 of 25% of the unpaid balance of tax due.

39 (c) If any taxpayer, with fraudulent intent, fails to pay any tax or make,
40 render or sign any return, or to supply any information, within the time
41 required by K.S.A. 41-501, 41-501a or 41-502, and amendments thereto,
42 there shall be added to the tax a penalty in an amount equal to 50% of
43 the unpaid balance of tax due.

1 (d) Penalty or interest applied under the provisions of subsections (a)
2 and (b) shall be in addition to the penalty added under any other provi-
3 sions of this section.

4 (e) In addition to all other penalties provided by this section, any
5 person who willfully fails to make a return or to pay any tax imposed
6 under K.S.A. 41-501, 41-501a and 41-502, and amendments thereto, or
7 who makes a false or fraudulent return, or fails to keep any books or
8 records necessary to determine the accuracy of the person's reports, or
9 who willfully violates any regulations of the secretary of revenue, for the
10 enforcement and administration of the provisions of K.S.A. 41-501 to 41-
11 510, inclusive, and amendments thereto, or who aids and abets another
12 in attempting to evade the payment of any tax imposed by K.S.A. 41-501,
13 41-501a and 41-502, and amendments thereto, or who violates any other
14 provision of K.S.A. 41-501 to 41-510, inclusive, and amendments thereto,
15 and upon conviction thereof may be ordered to pay a fine not to exceed
16 \$1,000 or sentenced to confinement in the county jail for not to exceed
17 six month, or both.

18 (f) This section shall be part of and supplemental to the liquor control
19 act.

20 Sec. 3. K.S.A. 2001 Supp. 41-501 is hereby repealed.

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

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