

SENATE BILL No. 428

By Committee on Assessment and Taxation

2-3

9 AN ACT concerning taxation; relating to delinquent taxes; injunctions
10 and restraining orders related to taxpayer engaging in business.

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

13 Section 1. (a) Whenever a taxpayer has become seriously delinquent
14 in their payment of taxes, as provided in subsection (b), the secretary or
15 the secretary's designee may file a civil action in accordance with K.S.A.
16 60-901 *et seq.*, and amendments thereto, to enjoin the taxpayer from
17 engaging in business in Kansas. This action may be brought in the Shaw-
18 nee county district court or in the district court of the county in which
19 the taxpayer resides, has its principal place of business or has engaged in
20 business.

21 (b) A taxpayer shall be considered to be seriously delinquent in their
22 payment of taxes if:

23 (1) The sales tax account of the taxpayer, who the director of taxation
24 has assigned to a monthly filing schedule or an accelerated monthly filing
25 schedule under K.S.A. 79-3607, and amendments thereto, has had taxes,
26 interest or penalties that have been unreported or have been unpaid in
27 full or both for six consecutive months; or

28 (2) the withholding tax account of the taxpayer has had taxes, interest
29 or penalties that have been unreported or have been unpaid in full or
30 both for six consecutive months.

31 (c) (1) In a civil action that seeks an injunction under this section,
32 the secretary or secretary's designee shall submit an affidavit with the
33 pleadings that contains:

34 (A) A statement that the taxes, interest or penalties due on the tax-
35 payer's tax account or accounts have remained unreported or unpaid in
36 full, as specified in subsection (b);

37 (B) a detailed description of the taxpayer's delinquent tax account or
38 accounts, including the amount of tax, interest and penalties owed; and

39 (C) a statement that the injunctive relief will prevent the taxpayer's
40 ongoing violation of Kansas taxing statutes.

41 (2) Upon determining that the affidavit establishes a prima facie case
42 for injunction under this section, the court, without requiring a bond,
43 shall issue an order that temporarily restrains the taxpayer from engaging

1 in business in Kansas.

2 (d) (1) Whenever a restraining order or injunction is issued under
3 this section, the secretary or the secretary's designee may post a copy of
4 the restraining order or injunction at each entrance to the taxpayer's busi-
5 ness premises in conspicuous places clearly visible to the public, which
6 shall remain posted until removed by the department or at its written
7 request. Upon the request of the secretary or secretary's designee, the
8 sheriff's department in the county where the taxpayer's business premises
9 is located shall assist in the posting of and enforcement of the restraining
10 order or injunction and, along with the secretary or the secretary's desig-
11 nee, shall have the right to enter the business premises for such
12 purpose;

13 (2) no person with knowledge of a restraining order or injunction
14 shall: (A) Conduct any business at or on the premises for which an in-
15 junction or restraining order has been issued or posted;

16 (B) remove, damage or deface any restraining order or injunction that
17 has been posted at the taxpayer's business premises; or

18 (C) resist or interfere with the enforcement of any other provision of
19 this section.

20 (3) any person who disobeys a restraining order or injunction issued
21 pursuant to this section shall be subject to a fine of \$300, in addition to
22 any other appropriate remedies, damages or punishment for contempt
23 taken by the court pursuant to K.S.A. 60-909, and amendments thereto.
24 Each day of violation shall constitute a separate offense for which a fine
25 may be imposed. Any such fine may be imposed by the district court
26 where the action was filed originally.

27 (e) (1) In a civil action that seeks an injunction under this section,
28 the court shall enjoin the taxpayer from engaging in business, if the court
29 finds both of the following:

30 (A) The taxes, interest or penalties due on the taxpayer's tax account
31 have remained unreported or unpaid in full, as specified in subsection
32 (b); and

33 (B) the injunctive relief will prevent the taxpayer's continuing viola-
34 tion of the Kansas retailers' sales tax act.

35 (2) In all hearings and other proceedings held in a civil action under
36 this section, the affidavit of the secretary or secretary's designee submit-
37 ted with the pleading in accordance with subsection (c) shall be prima
38 facie evidence of the amount of tax, interest and penalties due from the
39 taxpayer.

40 (f) All proceedings and hearings on the restraining order or injunction
41 in a civil action brought under this section shall be in accordance with
42 K.S.A. 60-901 *et seq.*, and amendments thereto, in the district court where
43 the action was filed originally. Kansas district courts shall be without ju-

1 jurisdiction to entertain any separate action brought by a taxpayer or other
2 party that seeks to enjoin or otherwise delay a proceeding brought by the
3 secretary or the secretary's designee under this section.
4 Sec. 2. This act shall take effect and be in force from and after its
5 publication in the statute book.