

Approved: 3/31/00
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson Wagle at 9:00 a.m. on March 15, 2000, in Room 519-S of the Capitol.

All members were present except: Representative Gatewood - excused
Representative Howell - excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes
Shirley Sicilian, Department of Revenue
Ann Deitcher, Committee Secretary
Edith Beaty, Taxation Secretary

Conferees appearing before the committee:

SB 378 - Refund of sales tax paid on food; income limitations.

Chris Courtwright of the Research Department briefed the Committee on the amendment to **SB 378**. He explained that it would amend the food sales tax refund program to require that two kinds of tax-exempt income, public sector pension income and interest on governmental debt, be added to the Kansas Adjusted Gross Income (KAGI) for purposes of determining eligibility.

The bill would also clarify that eligible taxpayers who also file for individual income tax purposes as heads of household are to continue to receive an extra refund amount to dovetail with provisions of the income tax law which allow such filers to receive an additional personal exemption.

The hearing on **SB 378** was concluded

SB 379 - Income defined for homestead property tax refund purposes.

The amendment to **SB 379** was explained to the Committee by Chris Courtwright. He told them that it would expand the Homestead Property Tax Refund Act by allowing Social Security disability payments to be excluded from the definition of income in determining eligibility for the program.

The hearing on **SB 379** was concluded.

SB 502 - Oil lease property tax refunds.

It was moved by Representative Minor and seconded by Representative Gregory that SB 502 be amended to make it effective upon publication of register. The motion to amend carried on a voice vote.

It was moved by Representative Johnston and seconded by Representative Minor that SB be passed as amended. The motion carried on a voice vote.

HB 2721 - Relating to oil and gas severance taxation.

It was moved by Representative Minor and seconded by Representative Long that on page 4, line 41, the addition of the word "decline" to follow the word "production". The motion to amend carried on a voice vote.

Representative Campbell moved to amend HB 2721 to add a cap so that the tax exemption wouldn't exceed the investment made. The motion was seconded by Representative Jenkins and failed on a show of hands.

It was moved by Representative Johnston and seconded by Representative Minor to adopt HB 2721 as amended. The motion passed on a voice vote.

SB 410 - Providing tax benefits and incentives for statutory compliance by certain taxpayers.

The Chair asked Shirley Sicilian of the Department of Revenue to explain her Agency's suggested amendment to SB 410. (Attachment 1).

It was moved by Representative Campbell and seconded by Representative Johnston to adopt the amendment to SB 410 requested by the Department of Revenue. The motion to amend passed on a voice vote.

Reference was made of the legislative testimony given by Marlee Bertholf of the Kansas Chamber of Commerce (KCCI). (Attachment 2).

Representative Gregory made the motion to adopt the suggested amendment of the KCCI. Representative Palmer seconded the motion which passed on a voice vote.

Representative Gregory then made the motion that was seconded by Representative Palmer, that the amendment in the KCCI be made into three separate amendments. They also moved for the adoption of the first proposed change. The motion carried on a voice vote.

It was moved by Representative Gregory and seconded by Representative Johnston to adopt the KCCI's second proposed change. The motion carried on a voice vote.

The motion was made by Representative Gregory and seconded by Representative Gilbert to adopt the KCCI's third proposed change. The motion failed.

Representative Jenkins moved that number 5 of the Department of Revenue's suggested amendments be deleted from the bill. The motion was seconded by Representative Campbell and failed on a voice vote.

It was moved by Representative Johnston and seconded by Representative Vickrey that SB 410 be passed as amended. The motion carried on a voice vote.

SB 411 - Relating to property taxation; concerning appeals procedures for certain valuation controversies.

The Chair called the Committee's attention to section d, (referring to subsection b), page 3, line 33 to 35 of SB 411, saying there was opposition to the requirement listed.

Representative Johnston pointed out section b, page 3, line 9 through 12, asking that it be deleted from SB 411.

It was moved by Representative Johnston and seconded by Representative Palmer to amend SB 411 by the deletion of this section. The motion to amend carried on a voice vote.

It was moved by Representative Campbell and seconded by Representative Sharp that SB 411 be passed as amended. The motion carried on a voice vote.

HB 2678 - Relating to sales taxation; exempting certain sales of hotel rental services.

Representative Tomlinson moved for the favorable passage of HB 2678. The motion was seconded by Representative Ray.

CONTINUATION SHEET

HB 2999 - Relating to sales taxation; exempting purchases by organizations for prevention of cruelty to animals.

A substitute motion was made by Representative Edmonds and seconded by Representative Johnston to amend HB 2999 into HB 2678. The motion to amend carried on a show of hands.

Representative Edmonds moved for the favorable passage of HB 2678. Representative Tedder seconded the motion. Representative Edmonds and Representative Tedder then withdrew their motion

Representative Kirk moved to amend SB 116 into HB 2678. The motion was seconded by Representative Johnston and passed on a voice vote.

Representative Aurand made a substitute motion that was seconded by Representative Long to take out the word "federal" from HB 2678. The substitute motion failed.

It was moved by Representative Johnston and seconded by Representative Edmonds that HB 2678 be passed favorably as amended. The motion carried on a voice vote.

Representative Palmer moved for the introduction of SB 464. Representative seconded the motion and it carried on a voice vote.

The meeting was adjourned at 10:45 a.m. The next meeting is scheduled for Thursday, March 16, 2000.

Office of Policy & Research
Shirley K. Sicilian, Director
915 SW Harrison St.
Topeka, KS 66625



(785) 296-3081
FAX (785) 296-7928
Hearing Impaired TTY (785) 296-6461
Internet Address: www.ink.org/public/kdor

Office of Policy & Research

TESTIMONY

To: Madame Chairman Wagle,
House Taxation Committee
From: Shirley K. Sicilian
Re: SB 410 – Taxpayer Benefits and Incentives
Date: March 14, 2000

Madame Chairman and members of the Committee, thank you very much for the opportunity to testify today regarding senate bill 410. Senate bill 410 is a department of revenue bill. It contains five provisions that we believe promote fairness, efficiency and clarity in the tax laws. The fiscal note for the bill is a one-time \$275,000. This impact is from the provision in section 7, which would raise the filing threshold for estimated tax. My testimony provides a summary of each of the five provisions.

1. Reduce Interest for Participants in a “Managed Sales Tax Audit Program” (\$1 - \$5). The department traditionally employs sufficient sales tax audit staff to review up to 2% or 3% of all Kansas sales tax filers’ annually. This means that for any given tax year, approximately 10% of sales tax payers will be audited within the 3 year statute of limitations. Clearly, our current system relies heavily on voluntary compliance, which the department fosters through a myriad of educational seminars and publications. The department also leverages both its education and its audit efforts to provide a third, middle approach to compliance. Under this middle approach, the department enters “managed-audit” agreements with certain eligible taxpayers that might not otherwise be audited for quite some time. Under the managed-audit agreement, a taxpayer commits to performing a self-audit against an audit plan developed by the director. The audit plan includes detailed educational materials and specifies: (1) the period to be audited, (2) the general scope of the audit, (3) records to be examined and the types of sampling techniques to be used, (4) specific procedures for determining liability, (5) deadline for completion of the audit, and (6) deadline for payment of the tax, penalty and interest assessed. Participation in our program has been limited. SB 410 would allow us to encourage participation by referencing the program in statute and allowing a 50% interest rate reduction on assessments identified by the eligible taxpayer and verified by the director. Because these are taxpayers that may not be audited otherwise, the fiscal note for this proposal is positive.

Note – original §6 stricken. This section would have provided an electronic filing “coupon” for individual income taxpayers for two years. However, shortly after our proposal was introduced, President Clinton announced a similar proposal (\$10 credit) at the federal level. Given the potential for states to experience a “coat-tail” effect from the federal proposal, together with the

House Taxation

Date: 3-15-00

Attachment #: 1-1

fact that our electronic filing is up 22% so far this year, this section may no longer be necessary and was stricken by the senate tax committee.

2. Allow an "Innocent Spouse" finding at the state level (§6). The IRS Restructuring and Reform Act of 1998 requires the IRS to relieve an "innocent spouse" from income tax liability. This federal relief automatically flows through to the state level. But where there is no outstanding federal liability, only state liability, there can be no federal "innocent spouse" finding. And, the state does not have any provision to grant this relief on its own. This means that an "innocent spouse" who has not paid off the federal liability will be relieved from state liability. But if the federal liability was paid, there can be no relief at the state level. This bill would explicitly recognize the flow through of the federal finding, and would allow the state to make its own "innocent spouse" finding where there is no outstanding federal liability. We believe these changes would promote fairness and strengthen Kansas' conformity with the federal law. The fiscal note for this proposal is minimal.

3. Raise the threshold for filing estimated individual income tax returns (§7). There is a two-prong test for determining whether an individual must file estimated individual income tax returns. One of those two prongs is whether the individual can reasonably expect to owe \$200 above withholding and credits. The \$200 threshold has been in place since at least 1989. This bill would move that threshold to \$350. Increasing the estimated filing threshold from \$200 to \$350 will have a "cash flow" impact that will reduce fiscal year 2001 state general fund revenues by **\$275,000**. There would be some administrative cost savings since increasing the threshold should reduce the number of border-line cases where estimated tax penalty is imposed, and subsequently waived on appeal.

4. Clarify certain provisions of the withholding tax law (§8 - §17). The current Kansas withholding statutes do not address non-wage payments, such as gambling winnings, taxable payments of Indian casino profits, or periodic pension payments. The state currently follows federal treatment, which subjects these payments to withholding requirements. The main purpose of these amendments is to codify Kansas' adherence to the federal treatment of non-wage payments. A second purpose of these amendments is to codify certain provisions currently found in our regulations. New Sections 12 and 13 are restatements of existing regulations that we feel are more appropriately in statute. New Section 12 restates K.A.R. 92-11-15 captioned "Employer's liability for withheld taxes." The language is modified only to include "payors." New §13 restates K.A.R. 92-11-16 captioned "Employer's failure to withhold." Again, the language is modified only to include "payors."

New Section 14 deals with the rate of withholding. Subsections (a) and (b) are intended to restate the provisions deleted from 79-3297a. 79-3297a also has provisions regarding codification of withholding tables in regulations. The department does issue a publication containing the withholding tables at least annually. Two years ago, the tables needed to be published twice in one year. The frequency of income tax changes, and the time lag inherent in publication by regulation, makes publishing new withholding tables in regulation impractical.

Because these changes simply codify existing practice and rules, they have no fiscal impact. There are a small number of technical clean-up amendments we have identified. These are listed on the fiscal note and I will provide a mark-up to the revisor.

5. Allow tax penalties to be phased in at 1% a month, up to 24% (§18 - §21). Under current statute, if a taxpayer fails to file or pay by the due date, a 10% penalty must be assessed

in addition to interest, even when the payment is only a day or two late. It isn't until six months later that the penalty rises to 25%. The secretary may waive penalty for "reasonable causes," and in the majority of cases, taxpayers do request a waiver. Most taxpayers that have a good filing record and for some reason are late paying their taxes generally are allowed a waiver of the penalty amount. This putting on and taking off of penalty works in theory but can be administratively expensive and time consuming in practice - a poor use of government resources. The system also has the potential to create inequities between those who simply pay the penalty without question and those who know to ask for waiver. Under the proposed bill, penalties would be phased-in at the rate of 1% a month, up to a maximum of 24%. The lower starting rate and the more gradual phase-in will provide a penalty that is reasonable under most circumstances and can be uniformly applied. Furthermore, the phase in of penalties should provide taxpayer's an incentive to file and pay the tax sooner rather than later, and thus may speed-up receipt of payment. KDOR's old income tax processing systems would not have been able to calculate interest as required by this bill. However, our new system is able to. The fiscal note for this provision is minimal.

Proposed amendment to eliminate contractor registration fees

Since the time we introduced this bill, an operational issue came to our attention that we respectfully request be relieved through legislation. K.S.A. 79-1009 currently requires non-resident contractors to register and pay a fee of \$10 for every Kansas contract with a price greater than \$10,000. The fee produces very little revenue relative to the operational cost of building its collection into our new system. In fiscal year 1998, only \$180.00 was remitted. We propose continuing the registration requirement, but eliminating the required fee:

To the end that the state of Kansas and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the employment security law, contractors, who are nonresidents of this state, desiring to engage in, prosecute, follow or carry on the business of contracting as defined in this act shall register with the secretary of revenue or the secretary's designee for each contract where the total contract price or compensation to be received amounts to more than \$10,000, except that a foreign corporation authorized to do business in this state shall not be required to register under the provisions of this act. ~~The secretary or the secretary's designee shall charge a fee for such registration in the amount of \$10 for each such contract. All such fees received by the secretary or the secretary's designee shall be deposited on Monday of each week with the state treasurer. The state treasurer shall thereupon credit the amount of such fees to the state general fund.~~

LEGISLATIVE TESTIMONY



The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

SB 411

March 14, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Taxation Committee

by

Marlee Bertholf

Director of Taxation & Small Business

Madam Chair and members of the Committee:

My name is Marlee Bertholf and I am the Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry (KCCI). KCCI is pleased to be a part of the Kansas Corporate Coalition that has worked to develop these amendments. Thank you for the opportunity to express our support of SB 411. These changes, proposed by the Board of Tax Appeals (BOTA), will address administrative concerns within the Board. We are very supportive of these changes and believe that these changes will benefit taxpayers.

In addition to the taxpayer friendly amendments addressed in SB 411, the Corporate Coalition has identified three additional procedural matters that will benefit Kansas taxpayers.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

House Taxation
Date: 3/15/00

Attachment # 2-1

The first proposed change would be to amend K.S.A. 79-2974 to require the publication of written final determinations made by the Secretary of Revenue or the Secretary's designee after the document has been modified to conceal the identity of the specific taxpayer. As part of the 1997 Taxpayer Fairness Act, all administrative rulings of the Department which include, Private Letter Rulings and Directives, were to be made available in a medium readily accessible to taxpayers. Presently, this information is available on the Department's Internet site. We believe that final determinations made by the Secretary of Revenue or their designee should also be made public as well.

The second proposed change extend the 60 day period for appealing Notices of Assessment or Denials of Refund Claims an additional 60 days, by written agreement of the parties. Today, taxpayers have 60 days to file an appeal after receiving a Notice of Assessment or Denial of a Refund Claim from the Department. This 60 day period cannot be extended. When the Department audits a business, they may take months to go through materials and receipts. When they issue an assessment, the business only has 60 days to go through the same material it took the Department months to go through. The business may file an appeal just to preserve their right to appeal. If the business could extend the time an additional 60 days, they would have more time to examine their records and to file a valid appeal, if one is warranted. Additionally, the Department may send the Notice to the general address of the corporation. By the time the Notice reaches the tax department, the 60 day time period may be greatly reduced.

The final proposal would not allow penalties to be collected from a taxpayer in the event that the tax liability and interest are abated on appeal. This is an issue that has been brought to the forefront in a recent Kansas Court of Appeals Case. In that case, all tax liability and interest were abated, but penalties were assessed because that issue had not been addressed on appeal. We believe that if all tax liability has been abated, it should follow that penalties should not be collected.

Again, on behalf of the members of KCCI and the Corporate Coalition, I would like to thank you for the opportunity to appear before you today. We feel these amendments are taxpayer friendly and urge you to support of SB 411 and our amendments. I will be happy to answer any questions.

An Act relating to taxation;
amending K.S.A. 79-2974, 79-3226,
79-3228, 79-3610 and 79-3615
and repealing the existing sections.

Section 1. K.S.A. 79-2974 is hereby
amended to read as follows: 79-2974.

~~after January 1, 1998, the secretary of revenue shall make available in a medium readily accessible to taxpayers all administrative rulings of the department of revenue which affect the duties and responsibilities of taxpayers pursuant to any law administered by the department of revenue. Private letter rulings shall be provided in such a manner as to conceal the identity of the specific taxpayer for whom the private letter ruling was issued. The secretary shall cause to be published in the Kansas register a description of each such administrative ruling within 30 days of such ruling together with specific instructions as to how the complete text of the administrative ruling may be obtained. As used in this section, administrative rulings shall include revenue notices, revenue rulings, information guides, policy directives, private letter rulings and directives of the division of property valuation or its director.~~

The
and written final determinations
of the secretary or secretary's
designee.

, written final determinations
of the secretary or secretary's
designee

Section 2. K.S.A. 79-3226 is hereby
amended to read as follows: 79-3226.

(a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's

The secretary or secretary's designee may extend the time for filing the written request hereunder for up to an additional 60 days if the parties agree in writing to such extension.

designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than \$5. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Section 3. K.S.A. 79-3228 is hereby amended to read as follows: 79-3228.

(a) If any taxpayer, without intent to evade the tax imposed by this act, shall fail to file a return or pay the tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily file a correct return of income or pay the tax due within six months thereafter, there shall be added to the tax an additional amount equal to 10% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any taxpayer fails voluntarily to file a return or pay the tax, if one is due, within six months after the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 25% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(c) If any taxpayer who has failed to file a return or has filed an incorrect or insufficient return, and after notice from the director refuses or neglects within 20 days to file a proper return, the director shall determine the income of such taxpayer according to the best available information and assess the tax together with a penalty of 50% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment.

(d) Any person, who with fraudulent intent, fails to pay any tax or to make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, shall be assessed a penalty equal to the amount of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment. Such person shall also be guilty of a misdemeanor and shall, upon conviction, be fined not more than \$1,000 or be imprisoned in the county jail not less than 30 days nor more than one year, or both such fine and imprisonment.

(e) Any person who willfully signs a fraudulent return shall be guilty of a felony, and upon

conviction thereof shall be punished by imprisonment for a term not exceeding five years. The term "person" as used in this section includes any agent of the taxpayer, and officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

(f) (1) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (b) and (c) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(2) No penalty shall be assessed hereunder with respect to any underpayment of income tax liability reported on any amended return filed by any taxpayer who at the time of filing pays such underpayment and whose return is not being examined at the time of filing.

(g) In case of a nonresident or any officer or employee of a corporation, the failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the director.

(h) In the case of a nonresident individual, partnership or corporation, the failure to do any act required by or under the provision of this act shall prohibit such nonresident from being awarded any contract for construction, reconstruction or maintenance or for the sale of materials and supplies to the state of Kansas or any political subdivision thereof until such time as such nonresident has fully complied with this act.

(3) No penalty assessed under this act shall be collected by the department if the taxpayer has had the unpaid balance of tax abated on appeal.

Section 4. K.S.A. 79-3610 is hereby amended to read as follows: 79-3610.

The director of taxation shall examine all returns filed under the provisions of this act, and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes. Any determination may be made on the basis of a generally recognized valid and reliable sampling technique, whether or not the person being audited has complete records of transactions and whether or not such person consents. In any such case, the director shall notify the taxpayer in writing of the sampling technique to be utilized, including the design and population of such sample. If the taxpayer demonstrates that any such technique used was not in accordance with generally rec-

ognized sampling techniques, the audit shall be dismissed with respect to that portion of the audit based upon such technique, and a new audit shall be performed. Within 60 days after the mailing of notice of the director's determination any taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to such taxpayer's tax liability, including the issue of whether the use of a generally recognized sampling technique achieved a result that was reflective of the taxpayer's actual tax liability, and an informal conference thereon shall be conducted and the secretary of revenue or the secretary's designee shall make a final determination and give the taxpayer notice thereof. In case any person required by the provisions of this act to make a return fails or refuses to do so, the secretary of revenue or the secretary's designee, after notice to such person, shall make a final determination of the amount of such tax according to the best judgment and information of the secretary of revenue or the secretary's designee.

The secretary or secretary's designee may extend the time for filing the written request hereunder for up to an additional 60 days if the parties agree in writing to such extension.

Whenever the director of taxation has reason to believe that a person liable for tax under any provisions of the Kansas retailers' sales tax act is about to depart from the state or to remove such person's property therefrom, or to conceal oneself or such person's property therein, or to do any other act tending to prejudice, jeopardize or render wholly or partly ineffectual the collection of such sales tax unless proceedings be brought without delay, the director shall immediately make an assessment for all sales taxes due from such taxpayer, noting such finding on the assessment. The assessment shall be made on the basis of emergency proceedings in accordance with the provisions of K.S.A. 77-536 and amendments thereto. Thereupon a warrant shall forthwith be issued for the collection of the tax as provided in K.S.A. 79-3235, and amendments thereto. The taxpayer may within 15 days from the date of filing of such warrant request an informal conference with the secretary or the secretary's designee on the correctness of the jeopardy assessment.

Section 5. K.S.A. 79-3615 is hereby amended to read as follows: 79-3615.

(a) If any taxpayer shall fail to pay the tax required under this act at the time required by or under the provisions of this act, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto from the date the tax was due until paid.

(b) If any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within six months from the date the return or tax was due, except in the case of an extension of time granted by the secretary of revenue or the secretary's designee, there shall be added to the tax due a penalty equal to 25% of the unpaid balance of such tax due. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (b) and (c) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under the Kansas retailers' sales tax act, or who makes a false or fraudulent return, or fails to keep any books or records prescribed by this act, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of this act, or who aids and abets another in attempting to evade the payment of any tax imposed by this act, or who violates any other provision of this act, shall, upon conviction thereof, be fined not less than \$500, nor more than \$10,000, or be imprisoned in the county jail not less than one month, nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

(h) No penalty assessed under this act shall be collected by the department if the taxpayer has had the unpaid balance of the tax abated on appeal.

Section 6. K.S.A. 79-2974, 79-3226, 79-3228, 79-3610 and 79-3615 are hereby repealed.

Section 7. This act shall take effect and be in force from and after its publication in the statute book.