

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:30 A.M. on January 18, 2005 in Room 519-S of the Capitol.

Committee members absent:

Committee staff present: Chris Courtwright, Kansas Legislative Research  
Martha Dorsey, Kansas Legislative Research  
Gordon Self, Revisor of Statutes Office  
Nancy Kirkwood, Secretary

Conferees appearing before the committee: Richard Cram, Department of Revenue  
Jay Befort, Attorney, Department of Revenue

Others attending: See attached list.

Final action :

**SB 23 - Sales tax calculation for isolated or occasional sale of motor vehicles; refunds; verification of selling price**

Chairperson Allen called for discussion and final action on **SB 23**. Joan Wagon, Secretary, Department of Revenue, appeared before the committee for questions. The Secretary stated the reg from last year is still in place; the Department needs direction from the Legislature on managing it. The Chair asked the committee to consider indicating its support, by Regulation, for a required bill of sale, and an affidavit signed by the buyer and seller swearing to the price of the vehicle. Secretary Wagon stated the Department would be in agreement, and asked that the minutes reflect the intent of the Committee.

Senator Lee made a motion to delete the Pennsylvania language from SB 23. This deleted the language page 11, line 40 thru 43. Page 12, line 1 through hereby. on line 2. Line 16 starting with and verify the purchase price in the; line 17, same manner as provided in this subsection and; and eliminate section I. Senator Schmidt seconded the motion. The motion carried.

The Chair recognized Richard Cram, Department of Revenue, to explain the proposed amendments Mr. Cram offered at the January 13<sup>th</sup> meeting: 1) The refund claimed would need to be filed within six months of the effective date of the Act; 2) There would be no refunds less than ten dollars, 3) Renewal of registration would be denied for any vehicle registered pursuant to this act and purchased in an isolated or occasional sale transaction if the county treasurer receives notice from the director of taxation that the purchaser of such vehicle has a final liability for unpaid sales tax due on such transaction.

Senator Schmidt moved to adopt number 1 and 2 of the balloon proposed by the Department of Revenue. Senator Jordan seconded the motion. The motion carried. Senator Schmidt moved to amend again by deleting section I, also part of the Department's proposal. The motion was seconded by Senator Pine and the motion carried. Senator Lee moved to recommend **SB 23** favorably as amended for passage, with Senator Apple's second. The motion carried.

**SB 12--Collection of delinquent tax; tax lien procedure**

Chairperson Allen opened the hearing on **SB 12** and recognized Richard Cram, KDOR. Richard introduced Jay Befort, Attorney, Legal Services. KDOR gave a brief overview of **SB12**, that would authorize the Department of Revenue to file a tax lien that would attach to both real and personal property to secure the payment of delinquent taxes. The taxes would include income, withholding, sales, use, liquor drink and enforcement taxes (Attachment 1).

There being no others to testify on the bill, the Chair closed the hearing on **SB 12**.

Chairperson asked for bill introductions. There being none, the meeting adjourned at 11:45 a.m.

SENATE TAXATION COMMITTEE GUEST LIST

DATE: January 18, 2005

NAME	REPRESENTING
Tony Folsom	KDOR - PVD
Roger Hamm	KDOR - PVD
Richard Crum	"
RICHARD REDEWALD	TAX PAPER
Cheri Proetzchner	Div of Budget
MARK BECK	PVD
<del>JEANNE GOODWIN</del>	<del>City of Wichita</del>
Adam Azeltine	Intern Rep. Kelley
George Peterson	Ks Taxpayers Network
Mark Desetti	KNET
Erik Sartorius	City of Overland Park
Michele Peterson	Kansas Governmental Consulting
Brent Haden	Ks Livestock Association
April Holman	Kansas Action for Children
BRAD HANREELSON	KFB
Leslie Kaufman	Ks Coop Council
Jenny Dan	Conlee Consulting Group
TOM PALACE	PMCA
Elaine Frisbre	Div. of the Budget





# K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE  
OFFICE OF POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation  
Richard Cram, Director of Policy & Research  
Jay D. Befort, Attorney, Legal Services

January 18, 2005

## Senate Bill 12—Delinquent Tax Collection

Chairperson Allen and Members of the Committee:

The proposal listed as Senate Bill 12 --Delinquent Tax Collection-- appears as a result of testimony before the Interim Committee in September regarding the Kansas, the IRS, and its sister states' lien statutes for the collection of taxes. Tax lien statutes in surrounding states and the IRS allow for liens against both the real and personal property of the taxpayer to secure the payment of delinquent taxes. The proposal seeks to add language to the tax warrant and lien statutes, specifically K.S.A. 79-3235 and 79-3617, which govern the filing of tax warrant to secure the payment of a number of the taxes administered by the Kansas Department of Revenue, including income, withholding, sales, use, liquor drink and enforcement taxes. The proposed language will create a statutory lien interest in favor of the state of Kansas in real and personal property of the delinquent taxpayer, and it tracks a current lien statute found in K.S.A. § 44-717 dealing with the collection of contributions taxes by the Kansas Department of Labor.

Currently, the tax warrant statutes, K.S.A. 79-3235 and 79-3617, for income and withholding and sales and use taxes provide for the creation and perfection of a lien against the real property of the debtor upon filing of the tax warrant with the district court clerk. To perfect a lien against the personal property of the taxpayer requires that agents or the county sheriff seize the personal property of the taxpayer pursuant to the authority granted under the two statutes. The proposed language would afford the state of Kansas a lien interest in the equity in the personal property of the taxpayer without the necessity of costly seizures, storage and subsequent sale of the property.

The bankruptcy context illustrates a specific advantage of this proposal. Once in bankruptcy, the automatic stay prohibits the seizure of the debtor's property to perfect a lien in the debtor's personal property. A lien interest, established prior to the bankruptcy, in the equity in the personal property of the debtor would enable the secretary of revenue to assert a secured claim against such equity in the personal property of a bankruptcy debtor without requiring the seizure of the property. The result is an enhanced recovery of taxes that may otherwise be subject to discharge in the event the taxes are beyond the bankruptcy priority claim classification period or are otherwise unsecured.

It should be noted the proposed lien against any equity in the personal property of the debtor would still be subject to any prior properly perfected security interests or liens of other creditors including those of the counties for personal property taxes.

We would be open to questions of the Committee concerning the proposed language to the two statutes, K.S.A. 79-3235 and 79-3617.

Please see attached balloon amendments to reflect some technical corrections in the language of the bill.

**SENATE BILL No. 12**

By Special Committee on Assessment and Taxation

12-30

9 AN ACT concerning taxation; relating to collection of delinquent taxes;  
10 tax liens; amending K.S.A. 2004 Supp. 79-3235 and 79-3617 and re-  
11 pealing the existing sections.

12

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

14 Section 1. K.S.A. 2004 Supp. 79-3235 is hereby amended to read as  
15 follows: 79-3235. If any tax imposed by this act or any portion of such tax  
16 is not paid within 60 days after it becomes due, the secretary or the  
17 secretary's designee shall issue a warrant under the secretary's or the  
18 secretary's designee's hand and official seal, directed to the sheriff of any  
19 county of the state, commanding the sheriff to levy upon and sell the real  
20 and personal property of the taxpayer found within the sheriff's county  
21 for the payment of the amount thereof, with the added penalties, interest  
22 and the cost of executing the warrant and to return the warrant to the  
23 secretary or the secretary's designee and pay to the secretary or the sec-  
24 retary's designee the money collected by virtue of it not more than 60  
25 days from the date of the warrant. The sheriff, within five days after the  
26 receipt of the warrant, shall file with the clerk of the district court of the  
27 county a copy thereof, and thereupon the clerk shall either enter in the  
28 appearance docket the name of the taxpayer mentioned in the warrant,  
29 the amount of the tax or portion of it, interest and penalties for which  
30 the warrant is issued and the date such copy is filed and note the tax-  
31 payer's name in the general index. No fee shall be charged for either  
32 entry. The amount of such warrant so docketed shall thereupon ~~become~~  
33 ~~a lien upon the title to and interest in the real property of the taxpayer~~  
34 ~~against whom it is issued~~ *be a lien in favor of the state of Kansas, secretary*  
35 *of revenue, upon all property and rights to property, whether real or*  
36 *personal, belonging to such taxpayer. Such lien shall not be valid as*  
37 *against any mortgagee, pledgee, purchaser or judgment creditor until no-*  
38 *tice thereof has been filed by the secretary of revenue in the office of*  
39 *register of deeds in any county in the state of Kansas, in which such*  
40 *property is located, and when so filed shall be notice to all persons claim-*  
41 *ing an interest in the property of the ~~employer~~ or person against whom*  
42 *filed. The register of deeds shall enter such notices in the financing state-*  
43 *ment record and shall also record the same in full in the miscellaneous*

taxpayer

1 ~~record and index the same against the name of the delinquent employer.~~ ~~taxpayer~~  
2 *The register of deeds shall accept, file and record such notice without*  
3 *prepayment of any fee, but lawful fees shall be added to the amount of*  
4 *such lien and collected when satisfaction is presented for entry. Such lien*  
5 *shall be satisfied of record upon the presentation of a satisfaction of judg-*  
6 *ment by the state of Kansas, secretary of revenue. The sheriff shall pro-*  
7 *ceed in the same manner and with the same effect as prescribed by law*  
8 *with respect to executions issued against property upon judgments of a*  
9 *court of record and shall be entitled to the same fees for services to be*  
10 *collected in the same manner.*

11 The court in which the warrant is docketed shall have jurisdiction over  
12 all subsequent proceedings as fully as though a judgment had been ren-  
13 dered in the court. In the discretion of the secretary or the secretary's  
14 designee a warrant of like terms, force and effect may be issued and  
15 directed to any officer or employee of the secretary, and in the execution  
16 thereof such officer or employee shall have all the powers conferred by  
17 law upon sheriffs, and the subsequent proceedings thereunder shall be  
18 the same as provided where the warrant is issued directly to the sheriff.  
19 The taxpayer shall have the right to redeem the real estate within a period  
20 of 18 months from the date of such sale. If a warrant is returned, unsat-  
21 isfied in full, the secretary or the secretary's designee shall have the same  
22 remedies to enforce the claim for taxes as if the state of Kansas had  
23 recovered judgment against the taxpayer for the amount of the tax. No  
24 law exempting any goods and chattels, lands and tenements from forced  
25 sale under execution shall apply to a levy and sale under any such warrant  
26 or upon any execution issued upon any judgment rendered in any action  
27 for income taxes. Except as provided further, the secretary or the secre-  
28 tary's designee shall have the right after a warrant has been returned  
29 unsatisfied or satisfied only in part, to issue alias warrants until the full  
30 amount of the tax is collected.

31 If execution is not issued within 10 years from the date of the docketing  
32 of any such warrant, or if 10 years shall have intervened between the date  
33 of the last execution issued on such warrant, and the time of issuing  
34 another writ of execution thereon, such warrant shall become dormant,  
35 and shall cease to operate as a lien on the real estate of the delinquent  
36 taxpayer. Such dormant warrant may be revived in like manner as dor-  
37 mant judgment under the code of civil procedure.

38 Sec. 2. K.S.A. 2004 Supp. 79-3617 is hereby amended to read as  
39 follows: 79-3617. Whenever any taxpayer liable to pay any sales or com-  
40 pensating tax, refuses or neglects to pay the tax, the amount, including  
41 any interest or penalty, shall be collected in the following manner. The  
42 secretary of revenue or the secretary's designee shall issue a warrant un-  
43 der the hand of the secretary or the secretary's designee and official seal

1 directed to the sheriff of any county of the state commanding the sheriff  
 2 to levy upon and sell the real and personal property of the taxpayer found  
 3 within the sheriff's county to satisfy the tax, including penalty and interest,  
 4 and the cost of executing the warrant and to return such warrant to the  
 5 secretary or the secretary's designee and pay to the secretary or the sec-  
 6 retary's designee the money collected by virtue thereof not more than 90  
 7 days from the date of the warrant. The sheriff shall, within five days, after  
 8 the receipt of the warrant file with the clerk of the district court of the  
 9 county a copy thereof, and thereupon the clerk shall either enter in the  
 10 appearance docket the name of the taxpayer mentioned in the warrant,  
 11 the amount of the tax or portion of it, interest and penalties for which  
 12 the warrant is issued and the date such copy is filed and note the tax-  
 13 payer's name in the general index. No fee shall be charged for either such  
 14 entry. The amount of such warrant so docketed shall thereupon ~~become~~  
 15 ~~a lien upon the title to, and interest in, the real property of the taxpayer~~  
 16 ~~against whom it is issued~~ *be a lien in favor of the state of Kansas, secretary*  
 17 *of revenue, upon all property and rights to property, whether real or*  
 18 *personal, belonging to such taxpayer. Such lien shall not be valid as*  
 19 *against any mortgagee, pledgee, purchaser or judgment creditor until notice*  
 20 *thereof has been filed by the secretary of revenue in the office of*  
 21 *register of deeds in any county in the state of Kansas, in which such*  
 22 *property is located, and when so filed shall be notice to all persons claim-*  
 23 *ing an interest in the property of the ~~employer~~ or person against whom*  
 24 *filed. The register of deeds shall enter such notices in the financing state-*  
 25 *ment record and shall also record the same in full in the miscellaneous*  
 26 *record and index the same against the name of the delinquent ~~employer~~.*  
 27 *The register of deeds shall accept, file and record such notice without*  
 28 *prepayment of any fee, but lawful fees shall be added to the amount of*  
 29 *such lien and collected when satisfaction is presented for entry. Such lien*  
 30 *shall be satisfied of record upon the presentation of a satisfaction of judg-*  
 31 *ment by the state of Kansas, secretary of revenue.* The sheriff shall pro-  
 32 ceed in the same manner and with the same effect as prescribed by law  
 33 with respect to executions issued against property upon judgments of a  
 34 court of record, and shall be entitled to the same fees for services.

taxpayer

taxpayer

35 The court in which the warrant is docketed shall have jurisdiction over  
 36 all subsequent proceedings as fully as though a judgment had been ren-  
 37 dered in the court. A warrant of similar terms, force and effect may be  
 38 issued by the secretary or the secretary's designee and directed to any  
 39 officer or employee of the secretary or the secretary's designee, and in  
 40 the execution thereof such officer or employee shall have all the powers  
 41 conferred by law upon sheriffs with respect to executions issued against  
 42 property upon judgments of a court of record and the subsequent pro-  
 43 ceedings thereunder shall be the same as provided where the warrant is



1 issued directly to the sheriff. The taxpayer shall have the right to redeem  
2 the real estate within a period of 18 months from the date of such sale.  
3 If a warrant is returned, unsatisfied in full, the secretary or the secretary's  
4 designee shall have the same remedies to enforce the claim for taxes as  
5 if the state of Kansas had recovered judgment against the taxpayer for  
6 the amount of the tax. No law exempting any goods and chattels, land  
7 and tenements from forced sale under execution shall apply to a levy and  
8 sale under any of the warrants or upon any execution issued upon any  
9 judgment rendered in any action for sales or compensating taxes. Except  
10 as provided further, the secretary or the secretary's designee shall have  
11 the right after a warrant has been returned unsatisfied, or satisfied only  
12 in part, to issue alias warrants until the full amount of the tax is collected.  
13 No costs incurred by the sheriff or the clerk of the court shall be charged  
14 to the secretary or the secretary's designee.

15 If execution is not issued within 10 years from the date of the docketing  
16 of any such warrant, or if 10 years shall have intervened between the date  
17 of the last execution issued on such warrant, and the time of issuing  
18 another writ of execution thereon, such warrant shall become dormant,  
19 and shall cease to operate as a lien on the real estate of the delinquent  
20 taxpayer. Such dormant warrant may be revived in like manner as dor-  
21 mant judgments under the code of civil procedure.

22 Sec. 3. K.S.A. 2004 Supp. 79-3235 and 79-3617 are hereby repealed.

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