



House Taxation Committee
Neutral Testimony on SB 248
Kansas Restaurant & Hospitality Association
Scott J. Schneider J.D.

Mr. Chair and members of the committee, I am Scott Schneider representing the Kansas Restaurant and Hospitality Association. The Kansas Restaurant and Hospitality Association has a long history of opposing the accompanying costs of new regulations. Most of our members are the smallest of businesses and are often impacted the most by any new rule. In FY 2022 the accommodation and food services industries collected \$358,022,822 in Kansas sales tax. Behind only general merchandise stores and motor vehicles.

The Kansas Department of Revenue recently released their 26 page guide¹ on how to collect the new Kansas food sale tax. Our members do not want to be tax collection experts. The burden placed on a restaurateur to divine what is taxed at the two competing rates should be alleviated by creating an enforcement safe harbor and reimbursing those who collect food sales tax a portion of the receipts.

If our tax collection arrangement was between two private entities the Kansas Uniform Commercial Code would allow us several defenses to break our agreement such as commercial impracticality, frustration of purpose, or even force majeure. But its not. We are essentially agents of the state given what is now the unenviable responsibility of collecting an unknown tax on an unknown product because of changing and sometimes unknowable facts.

Are we supposed to be liable for a sales tax audit if our customer decides to take his pastry and leave? Or what if he stays? What if I eat my prepared deli meats with my chili instead of take it home. There are 1007 taxing jurisdictions, multiplied by now two food rates with 26 pages of examples of potential product errors and we believe it would be appropriate to put some guidelines around our collections liability. Here are the rules around penalties and interest and personal liability with regard to tax collections:

Penalty

The penalty on a late sales or use tax payment is 1% for each month or portion thereof that the payment is late, up to a maximum of 24%.

¹ <https://www.ksrevenue.gov/pdf/pub1223.pdf>

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EXAMPLE: A January 2020 sales tax return (due February 25, 2020) upon which \$400 tax is due, is not paid until July 28, 2020. The penalty is 6% of the unpaid tax or \$24 (6 months X 1% X \$400 = \$24). The interest calculation for this example is shown in the next column.

CAUTION: A penalty of 50% may be assessed when, with fraudulent intent, a taxpayer fails to pay any tax, or make, render or sign any return, or to supply any information within the time required by law.

Interest

In addition to the late penalty, interest is charged for each month, or fraction thereof, that the return is not filed or the tax not paid. Since 1998 the annual percentage rate (APR) for interest has been tied to a federal underpayment rate, and is therefore subject to change each calendar year. Interest rates can be found on our website.

EXAMPLE: The interest on the January 2020 sales tax return of \$400 not paid until July 28, 2020 is calculated as follows. Six months X 2020 interest rate of .5% X \$400 tax due = the interest due of \$12.00.

PERSONAL LIABILITY FOR UNPAID TAXES

Every retailer is liable to the state of Kansas for payment of the sales and/or compensating use tax collected from its customers. You are personally liable for any unpaid tax balance regardless of your business structure (sole proprietorship, partnership, corporation, or limited liability company). Corporate officers and directors of a corporation, like sole proprietors and partners, are personally liable for the sales and use tax due during the period they hold office. Should a business fail to pay its taxes, any individual who is responsible for collection or payment of sales or compensating tax, or who is responsible for control, receipt, custody, or disposal of sales and use tax funds due the state of Kansas may be held personally liable for any unpaid tax, penalty, and/or interest.

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The KRHA sincerely appreciates your attention to this matter and would ask for your thoughtful assistance to avoid what is likely to be a troubling experience for many small tax collectors.

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