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2012 Kansas Statutes

79-41a02. Imposition and rate of tax; paid by consumer and collected by seller. (a) There is hereby imposed, for the privilege of selling alcoholic liquor, a tax at the rate of 10% upon the gross receipts derived from the sale of alcoholic liquor by any club, caterer, drinking establishment, public venue or temporary permit holder.

(b) The tax imposed by this section shall be paid by the consumer to the club, caterer, drinking establishment, public venue or temporary permit holder and it shall be the duty of each and every club, caterer, drinking establishment, public venue or temporary permit holder subject to this section to collect from the consumer the full amount of such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each club, caterer, drinking establishment, public venue or temporary permit holder collecting the tax imposed hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 79-41a03, and amendments thereto, and the state department of revenue shall administer and enforce the collection of such tax.

History: L. 1979, ch. 152, § 12; L. 1987, ch. 182, § 118; L. 1990, ch. 179, § 10; L. 2012, ch. 144, § 50; July 1.

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79-41a04. Local alcoholic liquor fund; distribution of moneys. (a) There is hereby created, in the state treasury, the local alcoholic liquor fund. Moneys credited to such fund pursuant to this act or any other law shall be expended only for the purpose and in the manner provided by this act.

(b) Except as provided in subsection (b)(4), all moneys credited to the local alcoholic liquor fund shall be allocated to the several cities and counties of the state as follows:

(1) Each city that has a population of more than 6,000 shall receive 70% of the amount which is collected pursuant to this act from clubs, public venues or drinking establishments located in such city, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(2) Each city that has a population of 6,000 or less shall receive 46 2/3% of the amount which is collected pursuant to this act from clubs, public venues or drinking establishments located in such city, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(3) Each county shall receive: (A) 70% of the amount which is collected pursuant to this act from clubs, public venues or drinking establishments located in such county and outside the corporate limits of any city, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made; and (B) 23 1/3% of the amount which is collected pursuant to this act from clubs, public venues or drinking establishments located in the county and within a city that has a population of 6,000 or less, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(4) From the amount collected from drinking establishments which are railway cars, counties shall receive 70% which shall be divided equally among the counties through which the railway car passes or in which the railway car operates, provided such county is a county where the qualified electors of the county:

(A) (i) Approved by a majority vote of those voting thereon, the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election in November 1986; or (ii) have approved a proposition to allow sales of alcoholic liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(B) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(c) The state treasurer shall make distributions from the local alcoholic liquor fund in accordance with the allocation formula prescribed by subsection (b) on March 15, June 15, September 15 and December 15 of each year. The director of accounts and reports shall draw warrants on the state treasurer in favor of the several county treasurers and city treasurers on the dates and in the amounts determined under this section. Such distributions shall be paid directly to the several county treasurers and city treasurers.

(d) Except as otherwise provided by this subsection, each city treasurer of a city that has a population of more than 6,000, upon receipt of any moneys distributed under this section, shall deposit the full amount in the city treasury and shall credit 1/3 of the deposit to the general fund of the city, 1/3 to a special parks and recreation fund in the city treasury and 1/3 to a special alcohol and drug programs fund in the city treasury. Each city treasurer of a city that has a population of 6,000 or less, upon receipt of any moneys distributed under this section, shall deposit the full amount in the city treasury and shall credit 1/2 of the deposit to the general fund of the city and 1/2 to a special parks and recreation fund in the city treasury. Moneys in such special funds shall be under the direction and control of the governing body of the city. Moneys in the special parks and recreation fund may be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. One-half of the moneys distributed under this section to cities located in Butler county shall be deposited in a special community support program and parks and recreation fund in the city treasury. Moneys in the special community support program and parks and recreation fund may be expended only for (1) the establishment and operation of a domestic violence program operated by a not-for-profit organization or (2) the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers.

(e) Except as otherwise provided by this subsection, each county treasurer, upon receipt of any moneys distributed under this section, shall deposit the full amount in the county treasury and shall credit to a special alcohol and drug programs fund in the county treasury 23 1/3% of the amount which is collected pursuant to this act from clubs or drinking establishments located in the county and within a city that has a population of 6,000 or less, from caterers whose principal place of business is so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made; of the remainder, the treasurer shall credit 1/3 to the general fund of the county, 1/3 to a special parks and recreation fund in the county treasury and 1/3 to the special alcohol and drug programs fund. Moneys in such special funds shall be under the direction and control of the board of county commissioners. Moneys in the special parks and recreation fund may be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. One-third of the moneys distributed under this section to Butler county shall be deposited in a special community support program and parks and recreation fund in the county treasury. Moneys in the special community support program and parks and recreation fund may be expended only for (1) the establishment and operation of a domestic violence program operated by a not-for-profit organization or (2) the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers. In any county in which there has been organized an alcohol and drug advisory committee, the board of county commissioners shall request and obtain, prior to making any expenditures from the special alcohol and drug programs fund, the recommendations of the advisory committee concerning such expenditures. The board of

county commissioners shall adopt the recommendations of the advisory committee concerning such expenditures unless the board, by unanimous vote of all commissioners, adopts a different plan for such expenditures.

(f) Each year, the county treasurer shall estimate the amount of money the county and each city in the county will receive from the local alcoholic liquor fund and from distributions pursuant to K.S.A. 79-41a05, and amendments thereto. The state treasurer shall advise each county treasurer, prior to June 1 of each year of the amount in the local alcoholic liquor fund that the state treasurer estimates, using the most recent available information, will be allocated to such county in the following year. The county treasurer shall, before June 15 of each year, notify the treasurer of each city of the estimated amount in dollars of the distribution to be made from the local alcoholic liquor fund and pursuant to K.S.A. 79-41a05, and amendments thereto.

History: L. 1979, ch. 152, § 14; L. 1982, ch. 424, § 5; L. 1985, ch. 171, § 14; L. 1986, ch. 185, § 3; L. 1987, ch. 182, §120; L. 1990, ch. 179, § 12; L. 1991, ch. 281, § 3; L. 2012, ch. 144, § 52; July 1.

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41-501. Tax rate; exemptions; limitation on tax by city; collection and disposition of tax; permit to import for certain purposes. (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 [of] 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, microdistillery 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 citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

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

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

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

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

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

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

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

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

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

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

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, microdistillery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, microdistillery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, microdistillery, farm winery, manufacturer or distributor.

History: L. 1949, ch. 242, § 53; L. 1953, ch. 238, § 6; L. 1958, ch. 50, § 2 (Budget Session); L. 1958, ch. 14, § 1

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79-41a03. Payment and collection of tax; bond; disposition of revenue. (a) The tax levied and collected pursuant to K.S.A. 79-41a02, and amendments thereto, shall become due and payable by the club, caterer, drinking establishment, public venue or temporary permit holder monthly, or on or before the 25th day of the month immediately succeeding the month in which it is collected, but any club, caterer, drinking establishment, public venue or temporary permit holder filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time the club, caterer, drinking establishment, public venue or temporary permit holder pays such retailers' sales tax. Each club, caterer, drinking establishment, public venue or temporary permit holder shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross receipts derived from the sale of alcoholic liquor by the club, caterer, drinking establishment, public venue or temporary permit holder for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross receipts derived from the sale of alcoholic liquor shall be kept separate and apart from the records of other retail sales made by a club, caterer, drinking establishment, public venue or temporary permit holder in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a club, caterer, drinking establishment, public venue or temporary permit holder as may be necessary to determine the accuracy of such reports required hereunder.

(c) The secretary of revenue is hereby authorized to administer and collect the tax imposed hereunder and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any club, caterer, drinking establishment, public venue or temporary permit holder liable to pay the tax imposed hereunder refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto.

(d) The secretary of revenue shall remit all revenue collected under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Subject to the maintenance requirements of the local alcoholic liquor refund fund created under K.S.A. 79-41a09, and amendments thereto, 25% of the remittance shall be credited to the state general fund, 5% shall be credited to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and the balance shall be credited to the local alcoholic liquor fund created by K.S.A. 79-41a04, and amendments thereto.

(e) Whenever, in the judgment of the secretary of revenue, it is necessary, in order to secure the collection of any tax, penalties or interest due, or to become due, under the provisions of this act, the secretary may require any person subject to such tax to file a bond with the director of taxation under conditions established by and in such form and amount as prescribed by rules and regulations adopted by the secretary.

(f) The amount of tax imposed by this act shall be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period except in the cases of fraud. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No refund or credit shall be allowed by the director after three years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director. Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the periods of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

History: L. 1979, ch. 152, § 13; L. 1982, ch. 424, § 1; L. 1983, ch. 315, § 3; L. 1984, ch. 351, § 24; L. 1985, ch. 171, § 13; L. 1987, ch. 182, § 119; L. 1990, ch. 179, § 11; L. 1992, ch. 295, § 3; L. 2001, ch. 62, § 1; L. 2001, ch. 167, § 14; L. 2012, ch. 144, § 51; July 1.

Revisor's Note:

Section was also amended by L. 2001, ch. 5, § 463, but that version was repealed by L. 2001, ch. 167, § 16.

(Special Session); L. 1961, ch. 240, § 1; L. 1964, ch. 34, § 1 (Budget Session); L. 1971, ch. 174, § 1; L. 1977, ch. 167, § 1; L. 1977, ch. 168, § 1; L. 1983, ch. 161, § 12; L. 1984, ch. 179, § 1; L. 1985, ch. 172, § 1; L. 1986, ch. 185, § 5; L. 1987, ch. 182, § 41; L. 1993, ch. 234, § 3; L. 2001, ch. 5, § 129; L. 2012, ch. 144, § 20; July 1.

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41-1126. Other state fees fund; use and expenditure of moneys in fund. (a) In addition to other purposes for which expenditures may be made from the other state fees fund of the department of social and rehabilitation services, moneys in the other state fees fund of the department of social and rehabilitation services shall be used by the secretary of social and rehabilitation services to provide financial assistance to community-based alcoholism and intoxication treatment programs for the following purposes: (1) Matching money under title XX of the federal social security act to purchase treatment services from approved treatment facilities; (2) providing start-up or expansion grants for halfway houses or rehabilitation centers for alcoholics; (3) purchasing services from approved treatment facilities for persons who are needy but who are not eligible for assistance under either title XIX or title XX of the federal social security act, and administrative costs of the alcohol and drug abuse section which shall not exceed 10% of the total moneys in the community alcoholism and intoxication programs fund; and (4) assisting to develop programs for prevention, education, early identification and facility assistance and review team.

(b) No state alcohol treatment program at Topeka state hospital, Osawatomie state hospital, Rainbow mental health facility or Larned state hospital shall receive any moneys under the provisions of subsection (a) of this section.

History: L. 1977, ch. 167, § 6; L. 1977, ch. 168, § 4; L. 1978, ch. 349, § 4; L. 1995, ch. 219, § 12; July 1.