

February 2, 2017

Senate Taxation Committee

Testimony in Support of Senate Bill 39

Presented by Chase Blasi

Chairman Caryn Tyson and Members of the Committee:

The Department of Revenue respectfully submits the following in support of Senate Bill 39:

This bill has five proposals that deal with the tax collection and enforcement process. The proposals seek to amend a notice provision, amend the confidentiality statutes, amend the tax warrant statutes, amend the filing frequency requirement for retailers' sales tax and liquor taxes and amend responsible party statute to align terms with already defined terms.

Section 4 amends the notice provision in 79-3235a(b) by removing the requirement that the notice be served within 5 days after the filing of the lien. There are three reasons for this part of the proposal:

1. The statute requires the KDOR to serve a notice on the taxpayer within 5 days of the filing of the "notice of lien." When the statute was enacted there seems to have been an oversight in referring to a "notice of lien" instead of a tax warrant. Because the triggering event of the notice to the taxpayer is based on a filing that does not occur, it presents problems and confusion.
2. The statute requires the notice to be served within 5 days of the filing of the tax warrant, using the term "tax warrant" for purposes of explaining the process. In most situations, the process for filing a tax warrant is for the KDOR to send the warrant to the sheriff who then serves it and returns it to the court for filing. Because the KDOR has no control over when the sheriff will serve the warrant, requiring KDOR to serve a notice within 5 days of the sheriff service is highly burdensome.
3. The KDOR has had several tax warrants dismissed by district court judges and the KDOR has had to dismiss several warrants on its own. The current dismissal fee is \$46 and KDOR spends around \$6,000 per year on these fees.

With the passage of this bill, the new process will be for the sheriff to serve the tax warrant with the notice attached. The notice will show the amount of tax due, an explanation of any administrative appeal rights that may be available, a contact number to the KDOR to discuss the tax warrant, and the provisions of law and procedures relating to the release of the warrant on property of the taxpayer.

Sections 1 and 2 amend the confidentiality statutes K.S.A. 75-5133 and K.S.A. 79-3234 to clarify that taxpayer information can be disclosed in any action or proceeding for the purposes of enforcing the tax laws. It is a concern of the KDOR that because the confidentiality statutes do not have an exception for the use of tax records in court proceedings, the tax records can't be used to defend or prosecute tax cases. Because the penalties for disclosing taxpayer information are severe the KDOR believes this is necessary to protect anyone that may use the information for a permissible purpose. With the passage of this bill it will now be clear that it is acceptable to use taxpayer information in court proceedings where the tax is at issue.

Sections 3 and 6 amend the tax warrant statutes to allow for the tax lien to attach to both real and personal property of the taxpayer. Currently KDOR tax liens only attach to real estate. Further, because the IRS liens attach to both real and personal property, KDOR is always junior to the IRS when dealing with personal property. The KDOR frequently loses money to the IRS because of this issue. It should be noted that the surrounding states also allow for tax liens to attach to both real and personal property.

Sections 3 and 6 add language to the tax warrant and lien statutes, specifically K.S.A. 79-3235 and 79-3617, which govern the filing of tax warrants to secure the payment of a number of 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 KDOR agents or the county sheriff to 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.

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

Sections 8 and 5 amend K.S.A. 79-41a03 and 79-3607, respectively, to allow the secretary of revenue and the director of taxation to change the filing frequency for liquor and sales taxes in cases where they have cause to believe that tax would be converted, diverted, lost, or otherwise

not timely paid if the taxpaying business were to remain on its normal filing schedule. Currently liquor taxes are filed on a monthly basis and sales taxes may be filed as infrequently as once per year or as frequently as twice per month depending on the size of the tax liability. With this arrangement there exists significant opportunity for businesses to collect tax and then fail to pay that tax over to the KDOR. By implementing this change the KDOR will have the ability to require problematic businesses to file their taxes on a more frequent basis, thereby lessening the KDOR's exposure to delinquent taxes.

Section 7 changes K.S.A. 79-3643 to align the term "person" with the definitions in KSA 79-3602(z). Currently KSA 79-3643 uses the term "individual", which is not defined in KSA 79-3602. By using a term that is defined both the KDOR and the taxpayers will have a better understanding of whom can be held as a responsible party under the Kansas retailers' sales tax act.

An example is an LLC that oversees the collection and remittance of retailers' sales tax on behalf of a business. The KDOR has routinely assessed the LLC as a responsible party; however, recently one such assessment was challenged in district court on the grounds that K.S.A. 79-3643 only applies to individuals and cannot include corporate entities.

The bill changes the word "individual" in the statute to "person" in order to encompass all the various entities that might act as a responsible party for the collection and remittance of taxes.

The Department respectfully requests passage of Senate Bill 39.

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