

HOUSE BILL No. 2418

By Committee on Taxation

4-5

1 AN ACT concerning taxation; relating to the use of a debt collection
2 agency to collect delinquent taxes; tax collections and service of
3 delinquent tax notice; time for payment of sales and liquor drink tax;
4 liability of persons to collect sales or compensating use tax;
5 administration of liquor enforcement tax; amending K.S.A. 75-5140
6 and K.S.A. 2018 Supp. 79-3235a, 79-3607, 79-3643, 79-4105 and 79-
7 41a03 and repealing the existing sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 75-5140 is hereby amended to read as follows: 75-
11 5140. The secretary of revenue may, for the purposes of collecting any
12 taxes more than ~~six months~~ 90 days delinquent due from a taxpayer,
13 contract with any debt collection agency doing business within or without
14 this state for the collection of such delinquent taxes, including penalties
15 and interest thereon. Such delinquent tax claims may be forwarded to the
16 debt collection agency for the purpose of litigation by its legal
17 representatives in the name of the director of taxation or the director of
18 property valuation, as the case requires, and at the debt collection agency's
19 expense, less court costs, as a means of facilitating and expediting the
20 collection process.

21 Sec. 2. K.S.A. 2018 Supp. 79-3235a is hereby amended to read as
22 follows: 79-3235a. (a) Notwithstanding any provision of K.S.A. 79-3235,
23 and amendments thereto, to the contrary, the procedures set forth by this
24 section shall apply to the issuance of any warrant and the levy upon
25 property pursuant to such provisions.

26 (b) The secretary or the secretary's designee shall notify in writing the
27 person who is the subject of the warrant of the filing of a warrant under
28 K.S.A. 79-3235, and amendments thereto. The notice required shall be
29 given ~~in person, left at the dwelling or usual place of business of such~~
30 ~~person or sent by certified or registered mail to such person's last known~~
31 ~~dwelling address, not more than five business days after the day of the~~
32 ~~filing of the notice of lien with the warrant.~~ The notice shall include in
33 simple and nontechnical terms the amount of unpaid taxes, the
34 administrative appeals available to the taxpayer with respect to such
35 warrant and the procedures relating to such appeals, and the provisions of
36 law and procedures relating to the release of warrants on property.

1 Sec. 3. K.S.A. 2018 Supp. 79-3607 is hereby amended to read as
2 follows: 79-3607. (a) Retailers shall make returns to the director at the
3 times prescribed by this section in the manner prescribed by the director,
4 including electronic filing, upon forms or format prescribed by the director
5 stating: (1) The name and address of the retailer; (2) the total amount of
6 gross sales of all tangible personal property and taxable services rendered
7 by the retailer during the period for which the return is made; (3) the total
8 amount received during the period for which the return is made on charge
9 and time sales of tangible personal property made and taxable services
10 rendered prior to the period for which the return is made; (4) deductions
11 allowed by law from such total amount of gross sales and from total
12 amount received during the period for which the return is made on such
13 charge and time sales; (5) receipts during the period for which the return is
14 made from the total amount of sales of tangible personal property and
15 taxable services rendered during such period in the course of such
16 business, after deductions allowed by law have been made; (6) receipts
17 during the period for which the return is made from charge and time sales
18 of tangible personal property made and taxable services rendered prior to
19 such period in the course of such business, after deductions allowed by law
20 have been made; (7) gross receipts during the period for which the return
21 is made from sales of tangible personal property and taxable services
22 rendered in the course of such business upon the basis of which the tax is
23 imposed. The return shall include such other pertinent information as the
24 director may require. In making such return, the retailer shall determine
25 the market value of any consideration, other than money, received in
26 connection with the sale of any tangible personal property in the course of
27 the business and shall include such value in the return. Such value shall be
28 subject to review and revision by the director as hereinafter provided.
29 Refunds made by the retailer during the period for which the return is
30 made on account of tangible personal property returned to the retailer shall
31 be allowed as a deduction under paragraph (4) ~~of this section~~ in case the
32 retailer has theretofore included the receipts from such sale in a return
33 made by such retailer and paid taxes therein imposed by this act. The
34 retailer shall, at the time of making such return, pay to the director the
35 amount of tax herein imposed, except as otherwise provided in this
36 section. The director may extend the time for making returns and paying
37 the tax required by this act for any period not to exceed 60 days under such
38 rules and regulations as the secretary of revenue may prescribe. When the
39 total tax for which any retailer is liable under this act, does not exceed the
40 sum of \$400 in any calendar year, the retailer shall file an annual return on
41 or before January 25 of the following year. When the total tax liability
42 does not exceed \$4,000 in any calendar year, the retailer shall file returns
43 quarterly on or before the 25th day of the month following the end of each

1 calendar quarter. When the total tax liability exceeds \$4,000 in any
2 calendar year, the retailer shall file a return for each month on or before the
3 25th day of the following month. When the total tax liability exceeds
4 \$40,000 in any calendar year, the retailer shall be required to pay the sales
5 tax liability for the first 15 days of each month to the director on or before
6 the 25th day of that month. Any such payment shall accompany the return
7 filed for the preceding month. A retailer will be considered to have
8 complied with the requirements to pay the first 15 days' liability for any
9 month if, on or before the 25th day of that month, the retailer paid 90% of
10 the liability for that fifteen-day period, or 50% of such retailer's liability in
11 the immediate preceding calendar year for the same month as the month in
12 which the fifteen-day period occurs computed at the rate applicable in the
13 month in which the fifteen-day period occurs, and, in either case, paid any
14 underpayment with the payment required on or before the 25th day of the
15 following month. Such retailers shall pay their sales tax liabilities for the
16 remainder of each such month at the time of filing the return for such
17 month. Determinations of amounts of liability in a calendar year for
18 purposes of determining filing requirements shall be made by the director
19 upon the basis of amounts of liability by those retailers during the
20 preceding calendar year or by estimates in cases of retailers having no
21 previous sales tax histories. The director is hereby authorized to modify
22 the filing schedule for any retailer when it is apparent that the original
23 determination was inaccurate.

24 (b) All model 1, model 2 and model 3 sellers are required to file
25 returns electronically. Any model 1, model 2 or model 3 seller may submit
26 its sales and use tax returns in a simplified format approved by the
27 director. Any seller that is registered under the agreement, which does not
28 have a legal requirement to register in this state, and is not a model 1,
29 model 2 or model 3 seller, may submit its sales and use tax returns as
30 follows: (1) Upon registration, the director shall provide to the seller the
31 returns required;

32 (2) seller shall file a return anytime within one year of the month of
33 initial registration, and future returns are required on an annual basis in
34 succeeding years; and

35 (3) in addition to the returns required in subsection (b)(2), sellers are
36 required to submit returns in the month following any month in which they
37 have accumulated state and local sales tax funds for this state in the
38 amount of \$1,600 or more.

39 (c) *Whenever the director has cause to believe that the tax levied by*
40 *the Kansas retailers' sales tax act may be converted, diverted, lost or*
41 *otherwise not timely paid in accordance with this section, the director*
42 *shall have the power to require returns and payment at any time, at more*
43 *frequent intervals than prescribed by this section in order to secure full*

1 *payment to the state of all amounts due in accordance with the Kansas*
2 *retailers' sales tax act.*

3 Sec. 4. K.S.A. 2018 Supp. 79-3643 is hereby amended to read as
4 follows: 79-3643. (a) Any ~~individual~~ *person* who is responsible for
5 collection or payment of sales or compensating tax or control, receipt,
6 custody or disposal of funds due and owing under the Kansas retailers'
7 sales and compensating tax acts who willfully fails to collect such tax, or
8 account for and pay over such tax, or attempts in any manner to evade or
9 defeat such tax or the payment thereof shall be ~~personally~~ liable for the
10 total amount of the tax evaded, or not collected, or not accounted for and
11 paid over, together with any interest and penalty imposed thereon. The
12 provisions of this section shall apply regardless of the: (1) Relationship
13 with the retailer held by such ~~individual~~ *person*; (2) form under which the
14 retailer conducts business, whether a sole proprietorship, partnership or
15 corporation; or (3) dissolution of the business. As used in this section,
16 "willfully" has the same meaning as such term has for federal tax purposes
17 in 26 U.S.C. § 6672.

18 (b) A notice of assessment issued to a responsible ~~individual~~ *person*
19 shall be considered to be a proceeding for the collection of the tax liability
20 of the business. If the liability of the business is determined in a
21 proceeding that has become final, any notice of assessment against a
22 responsible ~~individual~~ *person* must be issued within three years after the
23 proceeding against the business has become final.

24 (c) Within 60 days after the mailing of a notice of assessment against
25 a responsible ~~individual~~ *person*, the person assessed may request an
26 informal conference with the secretary of revenue under K.S.A. 79-3226,
27 and amendments thereto, for a determination of whether such person is a
28 responsible ~~individual~~ *person* under subsection (a) and for a determination
29 of the tax liability of the business.

30 (d) If notice of assessment and warrant are issued to a responsible
31 ~~individual~~ *person* pursuant to K.S.A. 79-3610, and amendments thereto, or
32 any other jeopardy provision of chapter 79 of the Kansas Statutes
33 Annotated, *and amendments thereto*, the person assessed may request that
34 the informal conference held pursuant to subsection (c) be expedited.
35 When such a request is made, the secretary shall schedule the conference
36 to be held within 21 days after receipt of the request and shall issue a
37 written final determination within 21 days after the close of the
38 conference.

39 (e) The provisions of this section shall be deemed to be supplemental
40 to the Kansas retailers' sales and compensating tax acts.

41 Sec. 5. K.S.A. 2018 Supp. 79-41a03 is hereby amended to read as
42 follows: 79-41a03. (a) The tax levied and collected pursuant to K.S.A. 79-
43 41a02, and amendments thereto, shall become due and payable by the

1 club, caterer, drinking establishment, public venue or temporary permit
2 holder monthly, or on or before the 25th day of the month immediately
3 succeeding the month in which it is collected, but any club, caterer,
4 drinking establishment, public venue or temporary permit holder filing an
5 annual or quarterly return under the Kansas retailers' sales tax act, as
6 prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such
7 conditions as the secretary of revenue may prescribe, pay the tax required
8 by this act on the same basis and at the same time the club, caterer,
9 drinking establishment, public venue or temporary permit holder pays such
10 retailers' sales tax. Each club, caterer, drinking establishment, public venue
11 or temporary permit holder shall make a true report to the department of
12 revenue, on a form prescribed by the secretary of revenue, providing such
13 information as may be necessary to determine the amounts to which any
14 such tax shall apply for all gross receipts derived from the sale of alcoholic
15 liquor by the club, caterer, drinking establishment, public venue or
16 temporary permit holder for the applicable month or months, which report
17 shall be accompanied by the tax disclosed thereby. Records of gross
18 receipts derived from the sale of alcoholic liquor shall be kept separate and
19 apart from the records of other retail sales made by a club, caterer,
20 drinking establishment, public venue or temporary permit holder in order
21 to facilitate the examination of books and records as provided herein.

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

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

37 (d) The secretary of revenue shall remit all revenue collected under
38 the provisions of this act to the state treasurer in accordance with the
39 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
40 each such remittance, the state treasurer shall deposit the entire amount in
41 the state treasury. Subject to the maintenance requirements of the local
42 alcoholic liquor refund fund created under K.S.A. 79-41a09, and
43 amendments thereto, 25% of the remittance shall be credited to the state

1 general fund, 5% shall be credited to the community alcoholism and
2 intoxication programs fund created by K.S.A. 41-1126, and amendments
3 thereto, and the balance shall be credited to the local alcoholic liquor fund
4 created by K.S.A. 79-41a04, and amendments thereto.

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

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

31 (g) *Whenever the secretary of revenue has cause to believe that the*
32 *tax levied pursuant to K.S.A. 79-41a02, and amendments thereto, may be*
33 *converted, diverted, lost or otherwise not timely paid in accordance with*
34 *this section, the secretary shall have the power to require returns and*
35 *payment at any time, at more frequent intervals than prescribed by this*
36 *section in order to secure full payment to the state of all amounts due in*
37 *accordance with K.S.A. 79-41a01 et seq., and amendments thereto.*

38 Sec. 6. K.S.A. 2018 Supp. 79-4105 is hereby amended to read as
39 follows: 79-4105. The provisions of K.S.A. 75-5133, 79-3605, 79-3607,
40 79-3609, 79-3610, 79-3611, 79-3612, 79-3613, 79-3615, 79-3617 and 79-
41 3619, and amendments thereto, relating to enforcement, collection and
42 administration, insofar as practicable, shall have full force and effect with
43 respect to taxes imposed under the provisions of K.S.A. 79-4101-~~to~~

1 *through* 79-4104, ~~inclusive~~, and amendments thereto. Wherever the word
2 "director" is used in such statutes it shall be construed to mean, for the
3 purposes of this act, the director of taxation. The provisions of K.S.A. 74-
4 2422, 74-2425, 74-2426 and 74-2427, and amendments thereto, relating to
5 the approval of rules and regulations, and the adoption of uniform rules
6 and regulations for such hearings and for appeals from orders of the
7 director of taxation and prescribing the duties of county attorneys with
8 respect to such appeals, insofar as practicable, shall have full force and
9 effect with respect to taxes imposed by, and proceedings under, the
10 provisions of K.S.A. 79-4101 ~~to~~ *through* 79-4108, ~~inclusive~~, and
11 amendments thereto.

12 Sec. 7. K.S.A. 75-5140 and K.S.A. 2018 Supp. 79-3235a, 79-3607,
13 79-3643, 79-4105 and 79-41a03 are hereby repealed.

14 Sec. 8. This act shall take effect and be in force from and after its
15 publication in the statute book.