

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2380

By Committee on Taxation

2-19

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

7
8 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

36 Sec. 3. K.S.A. 2018 Supp. 79-3607 is hereby amended to read as

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

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

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

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

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

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

1 *retailers' sales tax act.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 **Sec. 6. K.S.A. 2018 Supp. 79-4105 is hereby amended to read as**
38 **follows: 79-4105. The provisions of K.S.A. 75-5133, 79-3605, 79-3607,**
39 **79-3609, 79-3610, 79-3611, 79-3612, 79-3613, 79-3615, 79-3617 and 79-**
40 **3619, and amendments thereto, relating to enforcement, collection and**
41 **administration, insofar as practicable, shall have full force and effect**
42 **with respect to taxes imposed under the provisions of K.S.A. 79-4101**
43 **to through 79-4104, inclusive, and amendments thereto. Wherever the**

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

11 Sec. ~~6~~ 7. K.S.A. 75-5140 and K.S.A. 2018 Supp. 79-3235a, 79-3607,
12 79-3643, 79-4105 and 79-41a03 are hereby repealed.

13 Sec. ~~7~~ 8. This act shall take effect and be in force from and after its
14 publication in the statute book.