

HOUSE BILL No. 2663

By Committee on Taxation

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AN ACT concerning taxation on marijuana and controlled substances; relating to tax assessments; appeals, procedure; amending K.S.A. 79-5205 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-5205 is hereby amended to read as follows: 79-5205. (a) At such time as the director of taxation shall determine that a dealer has not paid the tax as provided by K.S.A. 79-5204, and amendments thereto, the director may immediately assess a tax based on personal knowledge or information available to the director of taxation; mail to the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax, penalties and interest; and demand its immediate payment. If payment is not immediately made, because collection of every assessment made hereunder is presumed to be in jeopardy due to the nature of the commodity being taxed, the director may immediately collect the tax, penalties and interest in any manner provided by K.S.A. 79-5212, and amendments thereto.

~~(b) The taxpayer may appeal the assessment within 15 days from the date of mailing of the notice or the date of personal service of the notice given pursuant to subsection (a), by requesting in writing a hearing by the director on the correctness of the assessment. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. An appeal of the assessment shall not stay the collection of the assessment but shall stay the sale of real or personal property seized pursuant to K.S.A. 79-5212 until the director rules on the correctness of the assessment.~~

~~(c)~~ (e) The tax, penalties and interest assessed by the director of taxation are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the director of taxation with the court or any other certificate by the director of taxation of the amount of tax, penalties and interest determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.

~~(d)~~ (c) In making an assessment pursuant to subsection (a), the director of taxation may consider but shall not be bound by a plea agree-

1 ment or judicial determination made in any criminal case.

2 (d) *Within 15 days after the mailing or personal service of such notice*
3 *of assessment pursuant to subsection (a), the taxpayer may request an*
4 *informal conference with the secretary of revenue or the secretary's des-*
5 *ignee relating to the tax, penalties and interest assessed by filing a written*
6 *request with the secretary or the secretary's designee. Such written re-*
7 *quest shall set forth the taxpayer's objections to the assessment. The pur-*
8 *pose of such conference shall be to review and reconsider all facts and*
9 *issues that underlie the assessment. The informal conference shall not*
10 *constitute an adjudicative proceeding under the Kansas administrative*
11 *procedure act and the rules of evidence shall not apply. No record of the*
12 *informal conference shall be made except at the request and expense of*
13 *the taxpayer. The taxpayer may be represented at the informal conference*
14 *by an attorney licensed in the state of Kansas. The taxpayer may also*
15 *present written or verbal information from other persons. The secretary*
16 *or the secretary's designee may confer at any time with any employee of*
17 *the department of revenue who has factual information relating to the*
18 *assessment under reconsideration. The secretary or the secretary's des-*
19 *ignee shall issue a written final determination within 270 days of the date*
20 *of the request for informal conference unless the parties agree in writing*
21 *to extend the time for issuing such final determination. A final determi-*
22 *nation issued within or after 270 days, with or without extension, consti-*
23 *tutes final agency action subject to administrative review by the state*
24 *board of tax appeals pursuant to K.S.A. 74-2438, and amendments*
25 *thereto. In the event that a written final determination is not rendered*
26 *within 270 days or within an agreed extension, the taxpayer may appeal*
27 *the assessment to the state board of tax appeals within 30 days after the*
28 *expiration date of the 270 days or agreed extension. A taxpayer's request*
29 *for an informal conference shall not stay the collection of the assessment*
30 *but shall stay the sale of real or personal property seized pursuant to*
31 *K.S.A. 79-5212, and amendments thereto, until the final determination is*
32 *made by the secretary or the secretary's designee. A taxpayer's appeal to*
33 *the state board of tax appeals shall not stay the collection of the assessment*
34 *but shall stay the sale of real or personal property seized pursuant to*
35 *K.S.A. 79-5212, and amendments thereto, until a decision is rendered by*
36 *the state board of tax appeals.*

37 Sec. 2. K.S.A. 79-5205 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the statute book.

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