



Kansas Tax

on

Marijuana and Controlled Substances

For public distribution

Prepared by D. Philip Wilkes, Staff Attorney

Revised 23 February 2016

**Kansas Department of Revenue
Docking State Office Building
915 SW Harrison Street
Topeka, Kansas 66612-1588
Phone: 785-296-7015**

History

The Kansas Tax on Marijuana and Controlled Substances was introduced as House Bill 2140, sponsored by Rep. Ed Rolfs, Chairman of the House Taxation Committee, in the 1987 Kansas Legislative Session. It was very similar to a Minnesota law passed the year before. The bill was designed to collect taxes on profits from the business of distributing marijuana because these profits are typically not reported on income tax returns. The bill was subsequently passed by the House and Senate, approved by the Governor, and became law on July 1, 1987, as K.S.A. 79-5201 et seq.

Constitutionality

In *State of Kansas v. Durrant & Dressel*, 244 Kan. 522, 769 P.2d 1174 (1989), the Kansas Supreme Court ruled that (1) a tax may be imposed on an activity that is wholly or partially unlawful under state or federal statutes; (2) the requirement to pay the tax and obtain and affix stamps as proof of payment does not violate the privilege against self-incrimination.

In *State of Kansas v. Matson*, 14 K.A.2d 632, 798 P.2d 488 (1990), the Kansas Court of Appeals ruled that imposition of the drug tax does not violate the due process clause of the Fourteenth Amendment to the U.S. Constitution.

In *State of Kansas v. Berberich*, 248 K. 854, 811 P.2d 1192 (1991), the Kansas Supreme Court ruled the drug tax does not violate the due process provisions of the U.S. Constitution.

In *State of Kansas v. Barbara Gullede*, 257 Kan. 915 (1995), the Kansas Supreme Court ruled that the imposition of the drug tax does not violate the double jeopardy clause of the U.S. Constitution.

In *Roy L. Jensen v. Edward E. Bouker, Judge, District Court of Ellis County, et al.*, Case No. 97-3032-DES (March 13, 2000), the U.S. District Court for the District of Kansas ruled that the Kansas drug tax does not violate the double jeopardy clause of the U.S. Constitution.. This was a habeas corpus action filed pursuant to 28 U.S.C. Sec. 2254 for relief from Mr. Jensen's criminal conviction in Ellis County District Court.

Authority to administer the tax

Authority to perform all functions authorized by K.S.A. 79-5201 et seq. are vested in the Director of Taxation. [Subsections (a) and (b) of K.S.A. 79-5203] Taxation is one of the five divisions of the Kansas Department of Revenue, which is headed by the Secretary of Revenue. Under authority granted by K.S.A. 75-5127, the Director of Taxation has delegated certain employees reporting to the Director of Alcoholic Beverage Control (ABC), to perform all functions authorized by K.S.A. 79-5201 et seq. The Division of Alcoholic Beverage Control is one of the five divisions of the Kansas Department of Revenue. These designated employees within ABC are the Chief Enforcement Officer, Staff Attorney, Drug Tax Administrator, and all Revenue Enforcement Agents.

The Secretary of Revenue has the authority to adopt rules and regulations necessary to administer and enforce the drug tax. [Subsection (c) of K.S.A. 79-5203] However, no regulations have been adopted as of this date.

Substances taxed

The tax applies to all marijuana, marijuana plants and controlled substances illegally manufactured, produced, shipped, transported, imported or in any manner acquired or possessed by a person within the State of Kansas if the quantity exceeds the specified thresholds. [Subsection (c) of K.S.A. 79-5201]

The thresholds were set because the purpose of the tax is not to tax marijuana and controlled substances possessed by individuals for their own personal use, but to tax persons who are in the business of distributing these drugs.

The tax rates are found in K.S.A. 79-5202.

<u>Substance</u>	<u>Threshold</u>	<u>Tax Rate per K.S.A. 79-5202</u>
Marijuana	over 28 grams	\$3.50 per gram or portion of a gram
Wet domestic marijuana plants	none	\$0.40 per gram or portion of a gram
Dry domestic marijuana plants	none	\$0.90 per gram or portion of a gram
Controlled substances sold by weight	over 1 gram	\$200 per gram or portion of a gram
Controlled substances sold by dosage units rather than by weight	10 doses	\$2,000 per 50 doses or portion thereof

Marijuana, marijuana plants and controlled substances are defined by K.S.A. 79-5201, as follows:

- Subsection (a) defines "marijuana" as including both real and counterfeit marijuana as defined by subsection (j) of Kansas criminal statute K.S.A. 21-5701, which reads:
 - (j) "Marijuana" means all parts of all varieties of the plant cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.
- Subsection (d) defines "domestic marijuana plant" as "any cannabis plant at any level of growth which is harvested or tended, manicured, irrigated, fertilized or where there is other evidence that it has been treated in any other way in an effort to enhance growth." There is no definition of

what constitutes a "dry" or "wet" plant. These terms have traditionally been interpreted by the Department of Revenue as follows:

"Wet domestic marijuana plant" is not defined in the statutes but is interpreted by the Department as a full plant, including the main stalk and roots, which is currently growing or has been pulled from the soil but has not had any significant amount of drying, either by natural or artificial means.

"Dry domestic marijuana plant" is not defined in the statutes but is interpreted by the Department as a full plant, including the main stalk and roots, which has been pulled from the soil and has been partially or completely dried, either by natural or artificial means.

- Subsection (d) defines "controlled substance" as "any drug or substance, whether real or counterfeit, as defined by K.S.A. 2013 Supp. 21-5701, and amendments thereto, which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of Kansas. Such term shall not include marijuana."

Subsection (a) of Kansas criminal statute K.S.A. 21-5701 defines "controlled substance" as "any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto." These statutes are commonly known respectively as Kansas Controlled Substances Schedules I, II, III, IV and V.

For the purpose of calculating the tax, the weight of the marijuana or controlled substance includes all material, mixture or preparation that is added to the marijuana or controlled substance. [Subsection (b) of K.S.A. 79-5202] This provision refers to any substance(s) added to dilute or "cut" the marijuana or controlled substance. In addition, when marijuana is incorporated or baked into brownies, cookies, candy or other "marijuana edibles", the tax would be calculated using the entire weight of such "edibles."

Examples of controlled substances which are typically sold and taxed by weight are powdered cocaine, crack cocaine in bulk, methamphetamine, heroin, psilocybin mushrooms, and steroids.

Examples of controlled substances which are typically sold and taxed by dosage unit are crack cocaine which has been broken down into individual "rocks" for consumption, Lysergic Acid Diethylamide (LSD), Ecstasy, and prescription medications containing controlled substances.

Prescription medications containing controlled substances are not taxed if found in the possession of a person who has a current prescription for the medications or their caretaker, unless that person or caretaker is giving or selling the medication to some other person.

Events which "trigger" the imposition of the tax

The tax is imposed immediately upon any person who knowingly receives marijuana, domestic marijuana plant or controlled substance and who is not legally entitled to do so in Kansas. [K.S.A. 79-5204] Such person is defined as a "dealer." [Subsection (c) of K.S.A. 79-5201]

This definition of "dealer" is different than the definition commonly used in criminal violations. There is no requirement that the person who acquires or possesses the marijuana, domestic marijuana plant or controlled substance actually sells or distributes the marijuana or controlled substance.

Persons who are legally entitled to possess marijuana or controlled substances are exempt from paying the tax. [K.S.A. 79-5210] These persons include the following:

- Law enforcement officers acting in their official capacities.
- Medical personnel, licensed pharmacists and lab technicians acting in their employment as such.
- Persons who have a valid prescription from a licensed doctor for their own consumption of a medication containing a controlled substance or a person who is authorized to administer the medication to the person to whom the prescription has been issued.

The Director of Taxation takes the position that persons who give, sell or arrange to sell their prescription medication containing a controlled substance to another person have violated the terms of their prescription and thereby invalidated their status to legally possess the controlled substance. Consequently, all doses of the medication obtained with that prescription in that person's possession become subject to the tax.

For the definition of "person" who may be assessed under subsection (c) of K.S.A. 79-5201, we must look elsewhere in the Kansas statutes. K.S.A. 77-201 states that a person may include both natural and "artificial" persons:

1. A natural person is defined as a living human being. There is no age restriction.
2. An "artificial" person is defined as a person created by state law. This would include:
 - Corporations, as defined by subsection (aa) of K.S.A. 17-78,102.
 - Limited Liability Companies (LLC), as defined by subsection (m) of K.S.A. 17-7663.
 - Partnerships, as defined by subsection (j) of K.S.A. 56a101.

An "artificial" person may be jointly assessed with a natural person or persons when the natural person or persons is a "major player" in a corporation, LLC or partnership, and uses a business, facility or bank account owned or operated by the corporation, LLC or partnership to facilitate the illegal drug possession or distribution or to launder drug proceeds. The most common example is when the owner of a retail business knowingly allows his employees to sell illegal drugs on the premises.

Voluntary payment of the tax through purchase of drug tax stamps

The tax must be paid immediately upon a person acquiring or possessing the marijuana, domestic marijuana plant or controlled substance within the State of Kansas. The payment of the tax must be evidenced by attaching the proper denominations of drug tax stamps to the marijuana, domestic marijuana plants, or controlled substance. [K.S.A. 79-5204]

Drug tax stamps are sold in denominations of \$10, \$50, \$100, \$500 and \$1,000 and may be purchased from the Director of Taxation at the Department of Revenue's Taxpayer Assistance Center in Topeka. To determine the current location and business hours of the Taxpayer Assistance Center, call 785-296-2055 or 785-368-8222. The stamps may also be purchased by mail. In order to comply with the requirement to pay the tax immediately, any person expecting to acquire or possess the substances

subject to the tax should arrange to purchase sufficient drug tax stamps in advance. If requested, employees of the Director of Taxation will assist in calculating the tax due at the time the stamps are purchased.

Employees of the Kansas Department of Revenue are prohibited from disclosing any information about of any person who purchases drug tax stamps which could be used to criminally prosecute that person. [K.S.A. 79-5206] In order to safeguard the constitutional right of individuals against self-incrimination, Department employees are not permitted to record or preserve any information about the identity or address of any person who purchases the stamps.

To be valid, the stamps must be attached to the substances for which the tax was paid. The stamps may be used only once and are valid for only three months from the date of purchase. The expiration date is placed on the stamps at the time of purchase. [Subsection (c) of K.S.A. 79-5204]

Assessment of the tax when not voluntarily paid

Upon receiving knowledge that a person is in possession of marijuana, domestic marijuana plants or controlled substances without proof that the proper tax was paid, in the form of unexpired drug tax stamps attached to the substances, any employee of the Department of Revenue authorized by the Director of Taxation may assess that person for the tax due on the substances possessed. [Subsection (a) of K.S.A. 79-5205] In this situation, the "dealer" is also assessed a 100% late payment penalty. [K.S.A. 79-5208]

“Possession” is not defined in the drug tax statutes. Therefore, we use the traditional definition applied in criminal cases, which includes both **actual** and **constructive** possession, as modified by the Kansas Court of Appeals decision in *In the Matter of the Appeal of Thomas Burrell*, 22 KanApp2d 109 (March 4, 1996). Application of the caselaw is as follows:

- A person should be assessed when they had **actual possession** of the illegal drugs for a sufficient period of time prior to being taken into custody so that they could have affixed drug tax stamps if they had wanted to. While there is no established time period for doing this, subsection (c) of K.S.A. 79-5204 says "immediately after receiving the substance." The Department interprets "immediately" as being within a few seconds.
- A person who never had actual possession of the illegal drugs will be assessed only when they had **constructive possession** of the drugs. Constructive possession means that the person either (1) had total or equally shared control over the place where the drugs were located and knew the drugs were there, or (2) had control over another person who had actual possession of the drug.

If more than one person has possession, then each person will be assessed for the full amount of the tax and penalty and each will be jointly and severally liable for payment.

Once the Department employee determines the amount of the tax and penalty to be assessed, the employee will prepare a Notice of Assessment and serve a copy on the Dealer, either in person or by mail to the person's last known address. Upon service, the tax and penalty become immediately due and

payable. If not paid immediately, the Department employee may immediately commence collection of the tax, penalty and any interest due, in accordance with K.S.A. 79-5212. [Subsection (a) of K.S.A. 79-5205]

The tax, penalty and any interest assessed by the Department employee are assumed to be correct and the burden is upon the person assessed to show their incorrectness or invalidity. [Subsection (b) of K.S.A. 79-5205]

In making an assessment, the Department employee may consider but shall not be bound by a plea agreement or judicial determination made in any criminal case relating to the same drug. [Subsection (c) of K.S.A. 79-5205]

Criminal prosecution for failure to voluntarily pay the tax and affix the stamps

K.S.A. 79-5208 also makes failure to comply with the requirement to timely pay the tax, and attach to the drugs proof of payment in the form of drug tax stamps, a felony crime with a severity level of 10. County and District Attorneys in Kansas have discretion on whether to prosecute "dealers" for this crime in the appropriate County District Court.

K.S.A. 79-5209 makes clear that compliance with the drug tax statutes by any person in Kansas does not protect that person from prosecution for violation of any Kansas criminal statutes.

In *State of Kansas v. Barbara Gullede*, 257 Kan. 915, (1995), the Kansas Supreme Court ruled that it is not a violation of the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution for a person to be both assessed the tax on marijuana and controlled substances and prosecuted criminally for possession or distribution of the same substances.

The U.S. District Court for the District of Kansas also came to the same conclusion in *Roy L. Jensen v. Edward E. Bouker, Judge, District Court of Ellis County, et al.*, Case No. 97-3032-DES (March 13, 2000).

Process for appealing an assessment

A "dealer" may appeal an assessment by making a written request for an informal conference with the Secretary of Revenue or the Secretary's Designee within 15 days after service of the Notice of Assessment upon him or her. The 15 days includes weekends and holidays and commences at the time that the Notice of Assessment is either delivered to the "dealer" personally or placed in the U.S. mail addressed to the dealer's last known address. The appeal must include the dealer's objections to the assessment. [Subsection (d) of K.S.A. 79-5205] The Notice of Assessment includes the instructions for making an appeal and the address to which the written appeal should be mailed.

The Department may waive the 15-day appeal deadline for "good cause" as defined by the Kansas Court of Appeals in *Chelf v. State of Kansas*, 46 Kan.App.2d 522, 263 P.3d 852 (2011) and subsequently

modified by its unpublished opinion in *In the Matter of the Appeal of Tracy M. Picanso*, No. 110,395 (2014).

Currently, all informal conferences are conducted by a Secretary's Designee and are conducted by telephone. The "dealer" may hire a Kansas licensed attorney to represent him or her during the appeal process. The Director of Taxation is represented by a Department of Revenue staff attorney during the appeal process. The Department of Revenue staff attorney schedules informal telephone conferences at times specified by the Secretary's Designee and gives written notice of the hearing time and date by mail to the dealer or dealer's attorney. It is the responsibility of the dealer or his attorney to initiate the telephone conference by calling the Secretary's Designee at the scheduled time. Department policy prohibits the Secretary's Designee from accepting collect calls from either the dealer or the dealer's attorney. The "dealer" and/or his or her attorney may present written or verbal information during the conference, including information from persons other than the dealer. Relevant documents may be submitted in advance of the conference. The Kansas Rules of Evidence which apply in formal administrative hearings or court proceedings do not apply at the conference. [Subsection (d) of K.S.A. 79-5205]

The Secretary or the Secretary's Designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination issued within or after 270 days, with or without extension, constitutes final agency action subject to administrative review by the state court of tax appeals pursuant to K.S.A. 74-2438. In the event that a written final determination is not rendered within 270 days or within an agreed extension, the dealer or dealer's attorney may appeal the assessment to the state board of tax appeals within 30 days after the expiration date of the 270 days or agreed extension. [Subsection (d) of K.S.A. 79-5205]

A dealer's request for an informal conference shall not stay the collection of the assessment but shall stay the sale of real or personal property, or the disposal of firearms, seized pursuant to K.S.A. 79-5212, until the final determination is made by the Secretary or Secretary's designee. A dealer's appeal to the state board of tax appeals 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 a decision is rendered by the state court of tax appeals or higher appellate court. [Subsection (d) of K.S.A. 79-5205]

Collection of the tax

K.S.A. 79-5212 provides procedures for the collection of the tax. This statute was initially enacted in 1994. Previously, collection of the drug tax was done under the collection statute for income taxes. K.S.A. 79-5212 has many of the same provisions used to collect the other taxes administered by the Kansas Department of Revenue, such as income and sales taxes. However, some provisions were added or modified based on the necessity for acting quickly before the assets of the "dealers" disappeared after the arrest of the "dealers" by law enforcement officers.

K.S.A. 79-5212 provides that employees designated by the Director of Taxation may issue one or more tax warrants if the "dealer" does not immediately pay the tax and penalties due. A tax warrant is issued for each county where property of the "dealer" is believed to be located. The tax warrants are executed

by either the local sheriff's office or Department of Revenue employees designated by the Director of Taxation by seizing real and personal property belonging to the "dealer," whether under the control of the "dealer" or a third party, such as a bank or credit union. Department of Revenue employees may request assistance from any local law enforcement officer in the execution of a tax warrant. The outcome of the collection effort is documented on the "Return" section of the tax warrant and the tax warrants are subsequently returned to the Department of Revenue. If any property is seized, a copy of the tax warrant is also filed with the Clerk of the District Court in the county listed on the tax warrant. Once the tax warrant is filed with the Court Clerk, it becomes a lien on any real estate owned by the "dealer" in that county. A copy of the tax warrant and list of property seized is mailed to the "dealer."

The Department may also garnish the wages of the "dealer" to collect any balance due on an assessment. [Subsection (g) of K.S.A. 79-5212]

Employees of the Director of Taxation may also issue alias warrants at any subsequent time until the full amount of the tax, penalty and interest is collected. [Subsection (h) of K.S.A. 79-5212]

Seized personal property is processed as follows:

- Seized cash and bank accounts are deposited into a special state account for drug tax proceeds and the "dealer" is credited with those funds toward the balance owed on the assessment.
- Seized tangible personal property is stored in a safe location and subsequently sold at public auction by an auction company on contract with the State of Kansas. The net proceeds from the sale of tangible personal property are then deposited into the special state account and the "dealer" is credited with those funds toward the balance owed on the assessment.
- There are procedures set forth in subsection (f) for the seizure and disposal of seized firearms, which do not involve sale. However, because of the time and expense involved with this process, the Department no longer seizes firearms but instead relies on local law enforcement agencies to seize and dispose of firearms if the "dealer" can no longer legally possess them.
- The statute also allows for seizure and sale of real estate owned by the "dealer." When the Department files a tax warrant against the "dealer" in District Court, it creates a lien against the real estate. The dealer will then be unable to give clear title to a subsequent purchaser of that real estate until the dealer works out payment of the drug tax liability with the Department. In some cases involving large quantities of illegal drugs that are prosecuted by the U.S. Attorney in Federal District Court, the U.S. Attorney will carry out a forfeiture action against real estate owned by the "dealer." In those cases, the Department will often share in the distribution of the forfeiture proceeds by virtue of the lien it has against the property.

Distribution of tax revenues

All funds collected by the Director of Taxation are placed in a special account under the control of the State of Kansas. All tangible personal property seized under K.S.A. 79-5212 are stored until sold at public auction in accordance with the provisions that statute. No collected funds are distributed and no seized tangible personal property is sold at public auction until the resolution of any active appeal of the assessment for which the funds or property was collected or seized.

Funds collected and the net proceeds from tangible personal property sold at public auction are subsequently distributed as provided by K.S.A. 79-5211. Twenty-five percent is transferred to the State General Fund under the control of the State Treasurer. The other 75% is disbursed as follows:

- If the law enforcement agency which conducted the investigation resulting in the drug tax assessment is a county agency, then the entire 75% is disbursed to that county and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes.
- If the law enforcement agency which conducted the investigation resulting in the drug tax assessment is a city agency, then the entire 75% is disbursed to the city and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes.
- If the law enforcement agency which conducted the investigation resulting in the drug tax assessment is a state law enforcement agency (Kansas Highway Patrol, Kansas Bureau of Investigation or Kansas Department of Wildlife and Parks), then the entire 75% is disbursed to a special fund maintained by that agency.
- If more than one law enforcement agency is substantially involved in the investigation resulting in the drug tax assessment, then the 75% is distributed equally among the city, county and state law enforcement agencies involved, unless an alternate distribution is mutually agreed upon by the law enforcement agencies involved and submitted in writing to the director of taxation.
- Funds received by cities and counties cannot be used to meet normal operating expenses of law enforcement agencies.

Appendix A – Kansas Drug Tax Statutes

79-5201. Taxation of marijuana and controlled substances; definitions. As used in this act:

(a) "Marijuana" means any marijuana, whether real or counterfeit, as defined by K.S.A. 2013 Supp. 21-5701, and amendments thereto, which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of Kansas;

(b) "controlled substance" means any drug or substance, whether real or counterfeit, as defined by K.S.A. 2013 Supp. 21-5701, and amendments thereto, which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of Kansas. Such term shall not include marijuana;

(c) "dealer" means any person who, in violation of Kansas law, manufactures, produces, ships, transports or imports into Kansas or in any manner acquires or possesses more than 28 grams of marijuana, or more than one gram of any controlled substance, or 10 or more dosage units of any controlled substance which is not sold by weight;

(d) "domestic marijuana plant" means any cannabis plant at any level of growth which is harvested or tended, manicured, irrigated, fertilized or where there is other evidence that it has been treated in any other way in an effort to enhance growth.

History: L. 1987, ch. 366, § 1; L. 1990, ch. 359, § 1; L. 2009, ch. 32, § 63; July 1.

79-5202. Same; imposition of tax; rates; measurement. (a) There is hereby imposed a tax upon marijuana, domestic marijuana plants and controlled substances, as defined by K.S.A. 79-5201, and amendments thereto, at the following rates:

(1) On each gram of marijuana, or each portion of a gram, \$3.50;

(2) on each gram of a wet domestic marijuana plant, \$.40;

(3) on each gram of a dry domestic marijuana plant, \$.90;

(4) on each gram of controlled substance, or portion of a gram, \$200; and

(5) on each 50 dosage units of a controlled substance that is not sold by weight, or portion thereof, \$2,000.

(b) For the purpose of calculating the tax hereunder, an ounce of marijuana or other controlled substance is measured by the weight of the substance in the dealer's possession. The weight of the marijuana or controlled substance includes all material, mixture or preparation that is added to the marijuana or controlled substance.

History: L. 1987, ch. 366, § 2; L. 1990, ch. 359, § 2; July 1.

79-5203. Same; administration by director of taxation; tax payments; stamps and labels; rules and regulations. (a) The director of taxation shall administer this act. All tax payments required pursuant to this act shall be made to the director, and shall be accompanied by a return upon forms devised and furnished by the director.

(b) The director of taxation shall adopt a uniform system of providing, affixing and displaying official stamps, labels or other indicia for marijuana and controlled substances upon which a tax is imposed.

(c) The secretary of revenue shall adopt rules and regulations necessary to administer and enforce the provisions of this act.

History: L. 1987, ch. 366, § 3; July 1.

79-5204. Same; evidence of payment required; purchase of stamps; validity; tax payable, when.

(a) No dealer may possess any marijuana, domestic marijuana plant or controlled substance upon which a tax is imposed pursuant to K.S.A. 79-5202, and amendments thereto, unless the tax has been paid as evidenced by an official stamp or other indicia.

(b) Official stamps, labels or other indicia to be affixed to all marijuana, domestic marijuana plants or controlled substances shall be purchased from the director of taxation. The purchaser shall pay 100% of face value for each stamp, label or other indicia at the time of purchase. Each such stamp, label or other indicia shall only be valid for three months after its date of issuance. The director shall issue the stamps, labels or other indicia in denominations in multiples of \$10. Any person may purchase any such stamp, label or other indicia without disclosing such person's identity.

(c) When a dealer purchases, acquires, transports, or imports into this state marijuana, domestic marijuana plants or controlled substances on which a tax is imposed by K.S.A. 79-5202, and amendments thereto, and if the indicia evidencing the payment of the tax have not already been affixed, the dealer shall have them permanently affixed on the marijuana, domestic marijuana plant or controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.

(d) Taxes imposed upon marijuana, domestic marijuana plants or controlled substances by this act are due and payable immediately upon acquisition or possession in this state by a dealer. Interest on tax liabilities shall accrue at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

History: L. 1987, ch. 366, § 4; L. 1990, ch. 359, § 3; July 1.

79-5205. Same; tax assessments; collection of tax; notice to taxpayer; presumption that assessment valid. (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.

(b) 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.

(c) In making an assessment pursuant to subsection (a), the director of taxation may consider but shall not be bound by a plea agreement or judicial determination made in any criminal case.

(d) Within 15 days after the mailing or personal service of such notice of assessment pursuant to subsection (a), the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax, penalties and interest assessed by filing a written request with the secretary of revenue or the secretary's designee. Such written request shall set forth the taxpayer's objections to the assessment. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the assessment. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act and the rules of evidence shall not apply. No record of the informal conference shall be made except at the request and expense of the taxpayer. The

taxpayer may be represented at the informal conference by an attorney licensed in the state of Kansas. The taxpayer may also present written or verbal information from other persons. The secretary or the secretary's designee may confer at any time with any employee of the department of revenue who has factual information relating to the assessment under reconsideration. The secretary or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination issued within or after 270 days, with or without extension, constitutes final agency action subject to administrative review by the state court of tax appeals pursuant to K.S.A. 74-2438, and amendments thereto. In the event that a written final determination is not rendered within 270 days or within an agreed extension, the taxpayer may appeal the assessment to the state court of tax appeals within 30 days after the expiration date of the 270 days or agreed extension. A taxpayer's request for an informal conference shall not stay the collection of the assessment but shall stay the sale of real or personal property, or the disposal of firearms, seized pursuant to K.S.A. 79-5212, and amendments thereto, until the final determination is made by the secretary or secretary's designee. A taxpayer's appeal to the state court of tax appeals 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, and amendments thereto, until a decision is rendered by the state court of tax appeals.

History: L. 1987, ch. 366, § 5; L. 1990, ch. 359, § 4; L. 1991, ch. 287, § 1; L. 1994, ch. 259, § 1; L. 2004, ch. 173, § 19; L. 2005, ch. 141, § 7; July 1.

79-5206. Same; report and return confidential. Neither the director of taxation nor a public employee may reveal facts contained in a report or return required by this act, nor can any information contained in such a report or return be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this act from the taxpayer making the return.

History: L. 1987, ch. 366, § 6; July 1.

79-5207. Same; examination of records by director; subpoenas. For the purpose of determining the correctness of any return, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a return or paid taxes, or collecting any taxes under this act, the director of taxation may examine, or cause to be examined, any books, papers, records or memoranda, that may be relevant to making such determinations, whether the books, papers, records or memoranda, are the property of or in the possession of the dealer or another person. The director of taxation may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director of taxation or any examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records or memoranda. The director of taxation may also issue subpoenas. Disobedience of subpoenas issued under this act is punishable by the district court of the district in which the subpoena is issued, or, if the subpoena is issued by the director of taxation, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of district court.

History: L. 1987, ch. 366, § 7; July 1.

79-5208. Same; tax and criminal penalties for violation of act. Any dealer violating this act is subject to a penalty of 100% of the tax in addition to the tax imposed by K.S.A. 79-5202 and amendments thereto. In addition to the tax penalty imposed, a dealer distributing or possessing marijuana or controlled substances without affixing the appropriate stamps, labels or other indicia is guilty of a severity level 10 felony.

History: L. 1987, ch. 366, § 8; L. 1994, ch. 291, § 83; July 1.

79-5209. Same; no immunity from criminal prosecution. Nothing in this act shall in any manner provide immunity for a dealer from criminal prosecution pursuant to Kansas law.

History: L. 1987, ch. 366, § 9; July 1.

79-5210. Same; certain persons not required to pay tax. Nothing in this act requires persons registered under article 16 of chapter 65 of the Kansas Statutes Annotated or otherwise lawfully in possession of marijuana or a controlled substance to pay the tax required under this act.

History: L. 1987, ch. 366, § 10; July 1.

79-5211. Same; disposition of revenue. All moneys received from the collection of taxes imposed under the provisions of K.S.A. 79-5201 *et seq.*, and amendments thereto, and 25% of all moneys collected from assessments of delinquent taxes and penalties imposed thereunder, shall be remitted 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 to the credit of the state general fund. The appraised value of a firearm seized and disposed of pursuant to K.S.A. 79-5212, and amendments thereto, which is applied to a taxpayer's liability shall not be considered as a collection of moneys under this section. The director of taxation shall remit 75% of all moneys received from the collection of assessments of delinquent taxes and penalties imposed pursuant to the provisions of K.S.A. 79-5201 *et seq.*, and amendments thereto, as follows: (a) If the law enforcement agency which conducted the investigation is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; (b) if the law enforcement agency which conducted the investigation is a city agency, the entire amount shall be deposited in the city treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; and (c) if more than one law enforcement agency is substantially involved in the investigative process, the amount shall be distributed equally among the city, county and state law enforcement agencies involved and credited to the appropriate county and city special law enforcement trust funds and state law enforcement agency funds unless an alternate distribution is mutually agreed upon by the law enforcement agencies involved and submitted in writing to the director of taxation. Funds received by city and county treasurers shall not be considered to be a source of revenue to meet normal operating expenses of law enforcement agencies.

History: L. 1989, ch. 287, § 1; L. 1991, ch. 287, § 2; L. 1994, ch. 259, § 2; L. 2001, ch. 5, § 468; L. 2005, ch. 141, § 8; July 1.

79-5212. Same; warrants for collection of tax, issuance, execution and returns; seizure and sale of property; tax liens. (a) Whenever a taxpayer liable to pay any tax, penalty or interest assessed pursuant to K.S.A. 79-5205, and amendments thereto, refuses or neglects to immediately pay the amount due, the director of taxation may issue one or more warrants for the immediate collection of the amount due, directed to the sheriff of any county of the state commanding the sheriff to seize and sell the real and personal property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found within the sheriff's county to satisfy the amount specified on the warrant and the cost of executing the warrant. The director of taxation may also issue one or more warrants directed to any employee of the department of revenue commanding the employee to seize and sell the real and personal property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found anywhere within the state of Kansas to satisfy the amount specified on the warrant and the cost of executing the warrant. A copy of the warrant shall also be mailed to the taxpayer at the taxpayer's last known address or served upon the taxpayer in person.

(b) The sheriff or department of revenue employee shall proceed to execute upon the warrant in the same manner as provided for attachment orders by K.S.A. 60-706, 60-707 and 60-710, and amendments thereto, except as otherwise provided herein. In the execution of a warrant issued to a department of revenue employee, the employee shall have all of the powers conferred by law upon sheriffs. Any law enforcement officer may assist in the execution of a warrant if requested to do so by a department of revenue employee.

(c) No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a seizure and sale, or in the case of firearms, sale or disposal, under any warrant.

(d) A third party holding funds or other personal property of the taxpayer shall immediately, or as soon thereafter as possible, after service of the warrant on such third party, deliver such funds or other personal property to the sheriff or department of revenue employee, who shall then deliver such to the director of taxation or the director's designee for deposit toward the balance due on the taxpayer's assessment.

(e) The sheriff or department of revenue employee shall make return of such warrant to the director of taxation within 60 days from the date of the warrant. If property is seized, then the sheriff or department of revenue employee shall also make return of such warrant to the clerk of the district court in the county where the property was seized.

(f) (1) If the taxpayer fails to appeal the assessment as provided by subsection (b) of K.S.A. 79-5205, and amendments thereto, or if the taxpayer requests a hearing and a final order has been entered by the director of taxation as to the correctness of the assessment, then the sheriff or department of revenue employee shall sell the seized property at public auction, except that firearms may be sold at public auction or disposed of as provided in subsection (2). The provisions of K.S.A. 60-2406, and amendments thereto, shall apply to liens against the property being sold. Notice of the sale of personal property shall be given in accordance with K.S.A. 60-2409, and amendments thereto. Notice of the sale of real property shall be given in accordance with K.S.A. 60-2410, and amendments thereto. The taxpayer shall have the right to redeem real property within a period of six months from the date of the sale.

(2) In the case of seized firearms not sold, the director of taxation shall obtain an appraisal value performed by a federally licensed firearms dealer or employee thereof. Such value shall be credited against the taxpayer's outstanding liability. Subsequent to such appraisal and credit against the taxpayer's outstanding liability, the director shall transfer such firearm or firearms as follows:

(A) If the firearms or firearms have historical significance, the director may transfer the firearm or firearms to the Kansas state historical society;

(B) the director may transfer the firearm or firearms to the secretary of wildlife, parks and tourism;

(C) the director may transfer the firearm or firearms to the director of the Kansas bureau of investigation; or

(D) the director may transfer the firearm or firearms to such city or county law enforcement agency where the firearm was seized.

At least 30 days prior to the transfer of such firearm or firearms, pursuant to this subsection, the director shall give written notice by mail to the taxpayer at the taxpayer's last known address of the appraised value of such firearm or firearms and the date that the director intends to transfer such firearm or firearms. The taxpayer may appeal the appraised value of any such firearm or firearms by filing a written request for a hearing before the district court in which the tax warrant used to seize such firearm or firearms was filed. Such request must be filed with the district court within 15 days after such notice to the taxpayer was mailed by the director. If no appeal is filed with the district court within 15 days, or if upon appeal the district court rules against the taxpayer, the director shall transfer such firearm or firearms.

(g) The director of taxation may also direct the sheriff or department of revenue employee to file any warrant issued pursuant to subsection (a) with the clerk of the district court of any county in Kansas, and thereupon the clerk shall enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for such entry. The amount of such warrant shall thereupon become a lien upon the title to, and interest in, the real property of the taxpayer located within such county. Thereupon, the director of taxation shall have the same remedies to collect the amount of the tax, penalty and interest, as if the state of Kansas had recovered judgment against the taxpayer, including immediately garnishing the wages or other property of the taxpayer pursuant to K.S.A. 60-716 *et seq.*, and amendments thereto. Such remedies shall be in addition to the other collection remedies provided herein.

(h) The director of taxation shall have the right at any time to issue alias warrants until the full amount of the tax, penalty and interest is collected.

History: L. 1994, ch. 259, § 3; L. 2005, ch. 141, § 9; L. 2012, ch. 47, § 130; July 1.