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February 4, 2013

House Taxation Committee

Testimony in Support of House Bill 2056

Presented by Richard Cram and Robert Challquist, Legal Services Attorney

Chairman Richard Carlson and Members of the Committee:

The Department of Revenue respectfully submits the following in support of House Bill 2056:

This bill proposes changes in three areas concerning the tax collection and enforcement process: the confidentiality statutes, the tax warrant notice provision, and the tax warrant and lien statutes.

#### Confidentiality Provisions

Sections 1 and 2 amend the confidentiality statutes 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 cannot 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.

#### Tax Warrant Notice Provision

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.

#### Tax Lien on Personal Property

Sections 3 and 5 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 5 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.

# 2013 House Bill 2056b Fiscal Note

Introduced as a House Bill

## Brief of Bill

House Bill 2056, as introduced, amends several statutes involving confidentiality of tax information and tax liens and tax warrants.

Section 1 amends K.S.A. 75-5133 to allow disclosure of information provided by microdistilleries so that such information can be disclosed by the Department similarly to that maintained regarding farm wineries and microbreweries under the Liquor Control Act. The amendment also would allow the disclosure of taxpayer information in any civil or criminal action or proceeding brought to enforce the tax or revenue laws of the state with respect to such taxpayer.

Section 2 amends K.S.A. 79-3234 to allow the disclosure of taxpayer information in any civil or criminal action or proceeding brought to enforce the tax or revenue laws of the state with respect to such taxpayer.

Section 3 amends K.S.A. 79-3235 to allow tax liens and warrants to be applied to personal property, as well as real property.

Section 4 amends K.S.A. 79-3235a to require that any notice sent to a taxpayer must also include the warrant.

Section 5 amends K.S.A. 79-3617 to allow tax liens and warrants to be applied to personal property, as well as real property.

The effective date of this bill is on publication in the statute book.

## Fiscal Impact

Passage of this bill will not impact state general fund revenues.

## Administrative Impact

No Impact.

## Administrative Problems and Comments

## Taxpayer/Customer Impact

## Legal Impact