

As Amended by Senate Committee

{As Amended by House Committee of the Whole}

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Session of 2012

HOUSE BILL No. 2413

By Legislative Post Audit Committee

11-17

1 AN ACT concerning criminal procedure; relating to aid to indigent
2 defendants; disclosure of tax information by department of revenue;
3 amending K.S.A. 2011 Supp. 79-3234 and repealing the existing
4 section; also repealing K.S.A. 2011 Supp. 79-3234b.
5

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

7 Section 1. K.S.A. 2011 Supp. 79-3234 is hereby amended to read as
8 follows: 79-3234. (a) All reports and returns required by this act shall be
9 preserved for three years and thereafter until the director orders them to be
10 destroyed.

11 (b) Except in accordance with proper judicial order, or as provided in
12 subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,
13 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be
14 unlawful for the secretary, the director, any deputy, agent, clerk or other
15 officer, employee or former employee of the department of revenue or any
16 other state officer or employee or former state officer or employee to
17 divulge, or to make known in any way, the amount of income or any
18 particulars set forth or disclosed in any report, return, federal return or
19 federal return information required under this act; and it shall be unlawful
20 for the secretary, the director, any deputy, agent, clerk or other officer or
21 employee engaged in the administration of this act to engage in the
22 business or profession of tax accounting or to accept employment, with or
23 without consideration, from any person, firm or corporation for the
24 purpose, directly or indirectly, of preparing tax returns or reports required
25 by the laws of the state of Kansas, by any other state or by the United
26 States government, or to accept any employment for the purpose of
27 advising, preparing material or data, or the auditing of books or records to
28 be used in an effort to defeat or cancel any tax or part thereof that has been
29 assessed by the state of Kansas, any other state or by the United States
30 government.

31 (c) The secretary or the secretary's designee may: (1) Publish
32 statistics, so classified as to prevent the identification of particular reports

1 or returns and the items thereof;

2 (2) allow the inspection of returns by the attorney general or other
3 legal representatives of the state;

4 (3) provide the post auditor access to all income tax reports or returns
5 in accordance with and subject to the provisions of subsection (g) of
6 K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

7 (4) disclose taxpayer information from income tax returns to persons
8 or entities contracting with the secretary of revenue where the secretary
9 has determined disclosure of such information is essential for completion
10 of the contract and has taken appropriate steps to preserve confidentiality;

11 (5) disclose to the secretary of commerce the following: (A) Specific
12 taxpayer information related to financial information previously submitted
13 by the taxpayer to the secretary of commerce concerning or relevant to any
14 income tax credits, for purposes of verification of such information or
15 evaluating the effectiveness of any tax credit or economic incentive
16 program administered by the secretary of commerce; (B) the amount of
17 payroll withholding taxes an employer is retaining pursuant to K.S.A.
18 2011 Supp. 74-50,212, and amendments thereto; (C) information received
19 from businesses completing the form required by K.S.A. 2011 Supp. 74-
20 50,217, and amendments thereto; and (D) findings related to a compliance
21 audit conducted by the department of revenue upon the request of the
22 secretary of commerce pursuant to K.S.A. 2011 Supp. 74-50,215, and
23 amendments thereto;

24 (6) disclose income tax returns to the state gaming agency to be used
25 solely for the purpose of determining qualifications of licensees of and
26 applicants for licensure in tribal gaming. Any information received by the
27 state gaming agency shall be confidential and shall not be disclosed except
28 to the executive director, employees of the state gaming agency and
29 members and employees of the tribal gaming commission;

30 (7) disclose the taxpayer's name, last known address and residency
31 status to the department of wildlife and parks to be used solely in its
32 license fraud investigations;

33 (8) disclose the name, residence address, employer or Kansas
34 adjusted gross income of a taxpayer who may have a duty of support in a
35 title IV-D case to the secretary of the Kansas department of social and
36 rehabilitation services for use solely in administrative or judicial
37 proceedings to establish, modify or enforce such support obligation in a
38 title IV-D case. In addition to any other limits on use, such use shall be
39 allowed only where subject to a protective order which prohibits
40 disclosure outside of the title IV-D proceeding. As used in this section,
41 "title IV-D case" means a case being administered pursuant to part D of
42 title IV of the federal social security act (42 U.S.C. § 651 et seq.) and
43 amendments thereto. Any person receiving any information under the

1 provisions of this subsection shall be subject to the confidentiality
2 provisions of subsection (b) and to the penalty provisions of subsection
3 (e);

4 (9) permit the commissioner of internal revenue of the United States,
5 or the proper official of any state imposing an income tax, or the
6 authorized representative of either, to inspect the income tax returns made
7 under this act and the secretary of revenue may make available or furnish
8 to the taxing officials of any other state or the commissioner of internal
9 revenue of the United States or other taxing officials of the federal
10 government, or their authorized representatives, information contained in
11 income tax reports or returns or any audit thereof or the report of any
12 investigation made with respect thereto, filed pursuant to the income tax
13 laws, as the secretary may consider proper, but such information shall not
14 be used for any other purpose than that of the administration of tax laws of
15 such state, the state of Kansas or of the United States;

16 (10) communicate to the executive director of the Kansas lottery
17 information as to whether a person, partnership or corporation is current in
18 the filing of all applicable tax returns and in the payment of all taxes,
19 interest and penalties to the state of Kansas, excluding items under formal
20 appeal, for the purpose of determining whether such person, partnership or
21 corporation is eligible to be selected as a lottery retailer;

22 (11) communicate to the executive director of the Kansas racing
23 commission as to whether a person, partnership or corporation has failed
24 to meet any tax obligation to the state of Kansas for the purpose of
25 determining whether such person, partnership or corporation is eligible for
26 a facility owner license or facility manager license pursuant to the Kansas
27 parimutuel racing act;

28 (12) provide such information to the executive director of the Kansas
29 public employees retirement system for the purpose of determining that
30 certain individuals' reported compensation is in compliance with the
31 Kansas public employees retirement act, K.S.A. 74-4901 et seq., and
32 amendments thereto; ~~and~~

33 (13) (i) provide taxpayer information of persons suspected of
34 violating K.S.A. 2011 Supp. 44-766, and amendments thereto, to the
35 secretary of labor or such secretary's designee for the purpose of
36 determining compliance by any person with the provisions of K.S.A. 44-
37 703(i)(3)(D) and K.S.A. 2011 Supp. 44-766, and amendments thereto. The
38 information to be provided shall include all relevant information in the
39 possession of the department of revenue necessary for the secretary of
40 labor to make a proper determination of compliance with the provisions of
41 K.S.A. 44-703(i)(3)(D) and K.S.A. 2011 Supp. 44-766, and amendments
42 thereto, and to calculate any unemployment contribution taxes due. Such
43 information to be provided by the department of revenue shall include, but

1 not be limited to, withholding tax and payroll information, the identity of
2 any person that has been or is currently being audited or investigated in
3 connection with the administration and enforcement of the withholding
4 and declaration of estimated tax act, K.S.A. 79-3294 et seq., and
5 amendments thereto, and the results or status of such audit or
6 investigation.

7 (ii) Any person receiving tax information under the provisions of this
8 paragraph shall be subject to the same duty of confidentiality imposed by
9 law upon the personnel of the department of revenue and shall be subject
10 to any civil or criminal penalties imposed by law for violations of such
11 duty of confidentiality.

12 (iii) Each of the secretary of labor and the secretary of revenue may
13 adopt rules and regulations necessary to effect the provisions of this
14 paragraph;

15 *(14) provide such information to the state treasurer for the sole*
16 *purpose of carrying out the provisions of K.S.A. 58-3934, and amendments*
17 *thereto. Such information shall be limited to current and prior addresses*
18 *of taxpayers or associated persons who may have knowledge as to the*
19 *location of an owner of unclaimed property. For the purposes of this*
20 *paragraph, "associated persons" includes spouses or dependents listed on*
21 *income tax returns; and*

22 *(15) disclosure* ~~disclose taxpayer information described hereafter~~
23 ~~from income tax returns to the state board of indigents' defense services~~
24 ~~for the purpose of determining whether a defendant is financially able to~~
25 ~~employ counsel and the ability of a defendant to contribute to the cost of~~
26 ~~the defendant's legal defense services. The board shall provide the~~
27 ~~department a list, in electronic format and in the manner determined~~
28 ~~by the department, of the names, social security numbers and relevant~~
29 ~~tax year of the defendants. The department shall provide to the board~~
30 ~~in electronic format, in the manner determined by the department, the~~
31 ~~relevant tax year, Kansas adjusted gross income and number of~~
32 ~~dependents reported by the defendant on the Kansas individual~~
33 ~~income tax return as shown on the department's record {After receipt~~
34 ~~of information pursuant to subsection (f), forward such information~~
35 ~~and provide the following reported Kansas individual income tax~~
36 ~~information for each listed defendant, if available, to the state board~~
37 ~~of indigents' defense services in an electronic format and in the~~
38 ~~manner determined by the secretary: (A) The defendant's name; (B)~~
39 ~~social security number; (C) Kansas adjusted gross income; (D)~~
40 ~~number of exemptions claimed; and (E) the relevant tax year of such~~
41 ~~records. Any social security number provided to the secretary and the~~
42 ~~state board of indigents' defense services pursuant to this section shall~~
43 ~~remain confidential}.~~

1 (d) Any person receiving information under the provisions of
2 subsection (c) shall be subject to the confidentiality provisions of
3 subsection (b) and to the penalty provisions of subsection (e).

4 (e) Any violation of subsection (b) or (c) is a class A nonperson
5 misdemeanor and, if the offender is an officer or employee of the state,
6 such officer or employee shall be dismissed from office.

7 (f) **{For the purpose of determining whether a defendant is**
8 **financially able to employ legal counsel under the provisions of K.S.A.**
9 **22-4504, and amendments thereto, in all felony cases with appointed**
10 **counsel where the defendant's social security number is accessible**
11 **from the computer records of the district court, the court shall**
12 **electronically provide the defendant's name, social security number,**
13 **district court case number and county to the secretary of revenue in**
14 **the manner and format agreed to by the office of judicial**
15 **administration and the secretary.**

16 (g) Nothing in this section shall be construed to allow disclosure of
17 the amount of income or any particulars set forth or disclosed in any
18 report, return, federal return or federal return information, where such
19 disclosure is prohibited by the federal internal revenue code as in effect on
20 September 1, 1996, and amendments thereto, related federal internal
21 revenue rules or regulations, or other federal law.

22 Sec. 2. K.S.A. 2011 Supp. 79-3234 and 79-3234b are hereby
23 repealed.

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