

# Answering With Authority: Kansas Tax and Vehicle Laws Demystified for Friends and Family

Kansas Department of Administration  
Office of Chief Counsel  
Spring CLE Zoom Webinar

Afternoon Session – 3:00 p.m. to 3:50 p.m.

---

By Ted Smith, Chief Counsel for the Kansas Department of Revenue  
Legal Services

# The Family Gathering

- Memorial Day BBQ – the only place where “grill” means both the food and legal advice to my cousin Eddie.
- How do you help your family and friends while making it clear that no client-lawyer relationship is being formed?
  - The formation of client-lawyer relationship does not depend on the payment of fees or the execution of a written agreement. *State e. rel. Stovall v. Meneley*, 271 Kan. 355 (2001). See Also K.S.A. 60-426(c)(3).
  - Make it clear to the person that no client-lawyer relationship is being formed. Something to the effect of, “I appreciate you reaching out for my thoughts on this matter. Please understand, that our conversation does not create a formal attorney-client relationship, and there are no expectations that what is discussed shall be confidential. To ensure proper legal guidance, I recommend consulting a practicing attorney who can officially take on your case.”
  - When you tell them that the conversation is not confidential – that is a good way of discouraging the friend from disclosing too much information and creating a subjective expectation that representation has commenced.
  - It doesn’t hurt to also write yourself a note of the conversation to yourself and even the friend reiterating the fact that no legal representation was commenced, nor confidential information provided.
- And before you ask, the answer is “No.” Talking about ethics on one slide does not make this a 1.0 ethics course.

# Government Attorney - Background Advice

How can a Constituent put a Kansas governmental attorney on his or her heels with one question? Ask what your Agency's broad authority is to take the action that it takes. Sometimes the broader the question the harder to answer.

As a governmental attorney you always need to have your Agency's plenary statutes available for quick response. In the case of the Kansas Department of Revenue (KDOR), it is:

Secretary of Revenue (K.S.A. 75-5102); Director of Taxation (K.S.A. 75-5102/75-5103); Property Valuation Division Director (K.S.A. 75-5105a); Division of Vehicle Director (K.S.A. 75-5110/K.S.A. 2023 Supp. 8-129/K.S.A. 2023 Supp. 8-2402); Alcoholic Beverage Control Director (K.S.A. 75-5117).

Admittedly, plenary authority is like telling your kids you have "eyes in the back of your head." It keeps everyone in line but try explaining that in court and see how far it gets you. Good for customer interactions, not so much for legal battles.

# Your Cousin Eddie and Income Tax

Your Cousin Eddie didn't pay his state income taxes again. WHAT HAPPENS NOW? Eddie claimed max exemptions and then some and spent all the money on his wardrobe.

**Question:** I am in a real pickle here because I thought state income taxes were just a fancy way of saying 'more money in my pocket.' Are they going to show up at my house and arrest me?



# Your Cousin Eddie and Income Tax

**Answer:** Unlikely. While there is authority to initiate misdemeanor criminal charges such instances are rare. Under K.S.A. 79-3228(e), Any person, who with *fraudulent intent*, fails to pay any tax or to make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, may be subject to a misdemeanor.

There is a risk of criminal charges if Eddie fails to file and pay his federal income taxes. Under 26 U.S.C. Sec. 7203, the I.R.S. has authority to initiate such charges and they routinely use that authority. The Federal rule does not contain the fraudulent intent language – simple noncompliance with Federal deadlines for filing and / or payment may service as a base for Federal charges of violations of the U.S. Code.

Sidenote – failure to file Federal and State income taxes may lead to attorney disciplinary proceedings. *In re Busch*, 287 Kan. 80 (2008). ( 8 years of non-filing led to suspension). Cases involving a failure to file for one year have historically resulted in public censure. *In re Materi*, 224 Kan. 615 (1978); *In re Brunk*, 197 Kan. 649 (1966). KRPC 8.4 – criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness.

# Your Cousin Eddie and Income Tax

**Question:** Cousin Eddie has received a petition and summons from KDOR regarding a tax warrant, is Eddie going to be kicked out of his house for not paying taxes?

**Answer:** It is unlikely the taxpayer will get evicted from their home. What is likely, the sheriff or other county process server will show up at taxpayers' residence to service a state tax warrant. Service may also be attempted via return receipt delivery. Being served with legal documents creates its own kind of anxiety, so remind the person that they need to file and pay their taxes, or a lien will be associated with the person's real estate in the county. KDOR's authority for this is located at K.S.A. 79-3235.

KDOR doesn't want to kick anyone out of their residence and the price obtained at Sheriff's Sale would likely be below market value. KDOR must compete with mortgage holders and there is an 18-month redemption period on real estate for the taxpayer to pay the amount owed and stay in the property.

Depending on the case and controversy, KDOR has other mechanisms, in addition to enforcing the tax warrant, to secure payment. (e.g., garnishment, capture of funds from subsequent year refunds)

# Your Cousin Eddie and Income Tax

Potential steps to address problem: 1st Step: Contact KDOR's civil tax enforcement to determine the current pay-off amount – (785) 296-6124 -The payoff amount will normally include an assessed/actual amount owed, accrued interest, and penalty; 2nd Step: The person files his state income taxes and pays owed taxes, interest, penalties, and lien release fee, or sets up a payment plan to pay off such amounts within one year; and 3rd Step: Once person has filed and paid off state income taxes, KDOR will file a release with the Court.

PRIOR TO JANUARY 1, 2024, it was the taxpayer's responsibility to file the satisfaction of judgment with the District Court to get KDOR's lien released. The 2023 Legislature changed the responsibility to KDOR to collect the release fee from taxpayer and file some form, electronic or physical, of a satisfaction of judgment. The change was necessary because many taxpayers did not follow up with the Court to pay the release fee (\$46.00) and file a satisfaction of judgment. K.S.A. 2023 Supp. 75-5148a (HB 2002, Sec. 1 (2023)).

Over the last 20 years, KDOR has filed approximately 200,000 and 250,000 tax warrants due to unpaid sales, income, withholding taxes. In rural counties, there is a higher percentage of taxpayers filing the satisfaction of judgments after paying the owed taxes. In larger population counties, the percentage of taxpayers following up with filing the satisfaction of judgment with the local District Court is much reduced (and paying the \$46.00 fee). This failure on the part of the taxpayer to file the satisfaction of judgment creates subsequent problems when the real property is later marketed for sale or the focus of probate.

# Your Aunt Rose and Property Tax

Your sweet Aunt Rose lives off her social security income and can't afford to pay her **property taxes** on her mortgage free residence. Now the county has filed a tax lien against her real property, and she is afraid she is going to be evicted! Rose isn't very good in a crisis.

Question: I didn't pay my home's property taxes in December, am I going to become a hobo?

Answer: The way property taxes are charged can create as much problems as the amount collected. When dealing with seniors on a fixed income, monthly social security checks are helpful for paying monthly, recurring expenses. Property taxes are charged on an annual or biannual basis, this can throw the seniors normal budgeting process out of whack. K.S.A. 79-2004





# Basic Property Tax Calculations

Basic Property Tax Calculation:

Residency Fair Market Value (FMV) (\$100,000)

Assessed Value (FMV \* .115) = \$11,500

Common Kansas Assessment Rates (K.S.A. 79-1439 and KS Const. Art. 11, Sec. 1):

Residential (and rentals (apartments) with stays 28 days or longer)	11.5 percent
Commercial/Industrial	25 percent
Vacant	12 percent
Agricultural	30 percent*

\* 30 percent for agricultural is tricky, for it is measured against economic use rather than fair market value, and this results in a much-reduced effective tax rate for agricultural land.

Assessed Value times mill levy = Property Tax.  $\$11,500 * .170$  (170 mills) = \$1,955.00

# Your Aunt Rose and Property Tax

If you ever decide to figure out your own property tax based on your local taxing jurisdictions, aggregate mill levy, ( you need a better hobby) be advised that there is a wrench that is thrown into the equation when a first timer is trying to figure their real property tax. (from fair market value to check paid to county)

K.S.A. 79-201x requires a further modification / exemption for residential purposes. ( $\$42,049$  (2023) \*  $.115$ ) \*  $.020$  (20 mill for school levy) =  $\$96.71$ .  $\$1,955.00 - \$96.71 = \underline{\$1,858.29}$  can be broken into two, equal payments  $\$929.15$ , in December and the following May. If Aunt Rose, doesn't make the first half payment in December, then the entire amount becomes due shortly thereafter and begins to accrue interest. (11% interest rate in 2024 – K.S.A. 79-2968)

The Legislature revisits K.S.A. 79-201x/K.S.A. 72-5142(b) frequently, and there is high likelihood that the residential modification (reducing a portion of fair market value for purposes of the state school levy) will be further amended this Legislative Session.

Effective Tax Rate (ETR) = Property Tax / FMV -  $\$1,858.29 / \$100,000 = .01858$  or approx. 1.9 percent per year.

# Your Aunt Rose and Property Tax

**Question:** What happens now when Rose misses her payment?

Not much on the surface, but the county obtains a lien on the property by law. K.S.A. 79-1804 (first **Answer:** and prior lien if no mortgage). The county now requires payment of the entire amount (\$1,858.29), and the debt continues to accrue interest. The next flashpoint for Aunt Rose is when the county treasurer publishes a notice in the local paper that Aunt Rose has not paid her property taxes in the following July and August. K.S.A. 79-2303.

The publication in the newspaper may cause some embarrassment but the risk that Aunt Rose will be evicted from her home is not immediate. The county must wait another three (3) years to give Aunt Rose an opportunity to pay/redeem her owed property taxes. K.S.A. 79-2401a (b)(1). After three years, the county may petition the local court to conduct a tax sale. **YOU NEED TO MAKE AUNT ROSE AWARE THAT** if the county waits the requisite 3 and half years to conduct a tax sale, that she, or any related party, will be prohibited from bidding on the property. K.S.A. 79-2804g.

-most counties, if not all, will give her every chance to redeem up until the day of the sheriff's sale.

It may take the county more than three years to conduct a tax sale, or one may not be conducted at all – with the county waiting to collect property tax when the property is eventually sold to another party (probate or real estate agent sale) through enforcement of the lien.

Unlike a mortgage foreclosure, there is little opportunity for Aunt Rose to redeem after the tax sale, but she may contest irregularities in the process.

# A Few Last Things on Property Tax (I could go all day on this)

Don't shoot the messenger. The Appraiser is merely setting a fair market value of the property – Aunt Rose may not be so sweet when she sees the valuation for property tax purposes, but her demeanor changes when she wants to sell the property.

Remind Aunt Rose that just because she purchased the house in 1972 for \$8,000, doesn't mean that is how the market values the home.

Aunt Rose can challenge the appraiser valuation only at certain periods, when there is change in valuation notice (around March 1) K.S.A. 79-1460, or upon payment (called payment under protest/PUP) K.S.A. 79-2005.

THERE ARE PROGRAMS AVAILABLE TO SENIOR CITIZENS AND IN SOME CASES DISABLED VETERANS TO HELP WITH PROPERTY TAXES RELIEF – THE LEGISLATURE CONTINUES TO IMPROVE ON THESE PROGRAMS EACH SESSION.

The three programs are: 1)- **Homestead Claim**(K-40H); 2) SAFESR – **Kansas Property Tax Relief for Low Income Seniors**(K-40PT); or 3) **Property Tax Relief Claim** (K040SVR) KDOR is continuing to work toward simplifying these programs and better promoting them to eligible landowners.

For more assistance, encourage Aunt Rose to visit KDOR's publication K-40 (<https://www.ksrevenue.gov/pdf/k-40hbook23.pdf> – link valid March 19, 2024), visit our website, or call the Kansas Taxpayer Assistance Center at 785-368-8222.

# Your Neighborhood Book Club Friends – Sales Tax

Your neighborhood book club has started an Amazon business where they purchase Amazon returned goods and resell them. The Good Girls have received a **Kansas sales tax assessment** for sales that may have or may not have occurred. They obtained a State reseller's sales tax certificate so they can purchase returned good pallets from Amazon or Walmart. The business idea never develops beyond the hypothetical and securance of a KDOR resellers certificate, but for a small number of sales.

**Question:** We are reaching out because, well, we're in a bit of a jam, and who better to turn to than our favorite, free legal lifeline? We didn't pay collected sales tax and now the State is out to get us!

**Answer:** Face the music, file those returns, pay up.

**Your friends must fight the instinct to go silent,**

Immediate acknowledgment and contact is crucial in working out a favorable outcome. Silence will most likely resort in more active collection matters by the State.



# Your Neighborhood Book Club Friends – Sales Tax

If your friends don't file their sales taxes annual/quarterly/or monthly forms, KDOR will issue an assessment of collected sales taxes that may exceed the actual amount owed by your friends – that is why it is important to keep in touch with KDOR. Even if your business had no sales, you must report such amount “Zero Sales” to KDOR, otherwise KDOR will estimate a tax liability and assess interest and penalties.

-This creates panic for the taxpayer with the sales tax resellers certificate. They know they had no sales or purchases, but KDOR doesn't know that and develops an estimate of sales tax owed based on prior periods.

A KDOR's retailers sales certificate requires more interaction with the State than simply applying for and receiving the license. A form ST-36 (or ST variation thereof) may need to be filed annually, quarterly, or monthly, based on sales activity. K.S.A. 79-3607. If KDOR has concerns about your friends' ability to pay collected sales taxes – KDOR may even request retailers maintain a sales tax bond. K.S.A. 79-3616.

Reporting sales tax can be complicated. KDOR has a publication and webservice to assist: 1) <https://www.ksrevenue.gov/pdf/pub1510.pdf>; and 2) <https://www.ksrevenue.gov/eservices.html>.

# Your Neighborhood Book Club Friends – Sales Tax

KDOR is much more aggressive about the collection of unpaid sales tax than it is for State income taxes referenced earlier. KDOR considers unremitted sales taxes to be monies the retailer has no rights to and has violated the retailers' agreement with KDOR to collect such taxes on KDOR's behalf.

Your neighborhood book club should be prepared for immediate liens on property, levies from bank accounts (business or personal), till tap at the business location.

The penalty on unpaid sales tax is 1% per month and that number grows each month by a percentage point to a maximum of 24% per month if a debt is outstanding for over 24 months. K.S.A. 79-3615.

KDOR has authority to prosecute your book club friends under K.S.A. 79-3615(h), but not under the general theft statute of K.S.A. 21-5801. KDOR, with the assistance of the Kansas Attorney General's Office, works with local county attorney and district attorney offices to initiate sales tax prosecutions. While KDOR continues actively collecting on unremitted sales taxes, the Kansas Supreme Court has held that sales taxes collected by retailers are not held in trust by the retailer on behalf of the State. *State v. Ruiz*, 317 Kan. 669 (2023).

# Your Best Friend Barney Grumble's Driver's License

**Your Best Friend Barney Grumble** has been offered a good job at the nuclear plant, but he is required to have a driver's license, and he can't get his driver's license reinstated due to convictions for DUI.

**Question:** To alcohol! The cause of . . . and solution to . . . all of life's problems. Hey wait buddy, can you help me get my license back?

**Answer:** Help your friend get a handle on his alcohol problem. His problems with securing a driver's license will not get resolved until he can control his drinking because Kansas is an IID compliance-based state.





# Your Best Friend Barney Grumble's Driver's License

Barney's problems with securing a driver's license will not get resolved until he can control his drinking because:

(1) Kansas ignition interlock rules now require a 90-day period of alcohol-free consumption while attempting to start and drive with ignition interlock. K.S.A. 8-1015. (HB 2377 (2022)). Prior to 2022, the licensee would get his license back regardless of indications of attempted impaired driving during the licensee's ignition interlock period – the only thing required was the period be served with an ignition interlock device installed.

(2) Barney must pay reinstatement fees required by K.S.A. 8-241. These reinstatement fees can be substantial (up to \$1,500.00) and must be paid to permit Barney to submit to drive testing at the driver's license exam station.

(3) Barney needs to make sure he has required insurance (K.S.A. 40-3104/40-3118) and files monthly proof of insurance via an SR22 (another expense) for a year.

IMMEDIATE STEPS BARNEY CAN TAKE - check out KDOR free, driver's license status check:  
<https://www.kdor.ks.gov/Apps/DLStatus/login.aspx> (link valid March 19, 2024).

# Your Best Friend Barney Grumble's Driver's License

The largest causes for active State driver's suspensions have little to do with impaired driving. Each year around 90 percent of all suspension spring from:

- 1) failure to comply with traffic tickets ;
- 2) insurance lapses ;
- 3) driving while suspended; or having a hold from another state.

This last type of hold (PDPS) may not show up in the Kansas' driver's license status check, so Barney may get a surprise when he visits the driver's license exam station.

# Your Son in Law Jessie Pinkman Gets a Vehicle Dealer License

Jessie wants to open a used car dealership. He needs your help setting up payroll accounts. Many friends or family members starting their first business or hiring their first employee figure out that there is a steep learning curve to opening SSI, Medicare, State & Federal withholding, and sales tax reporting. Tell Jessie to hire a bookkeeper, because the “do it yourself” route for a first-time business owner is tough. If Jessie doesn’t listen, then he will be dealing daily (at the beginning) with the IRS and KDOR.

After Jessie secures a taxpayer identification number, he will need to set up Federal Tax Deposits and set up a schedule for monthly or weekly distributions, file year end reporting, and satisfy all notice to his employees. Both the IRS and KDOR will contact Jessie immediately when there are deficiencies or late filings. IRS treats these funds (withholding, SSN contributions, Medicare distributions) as money owed to the employee/govt. service and will aggressively correct situations where a new employer is late or fails to turn over required amounts. **LEAVE THIS AREA TO THE PROFESSIONALS – accountants and bookkeepers.**



# Your Wife Moira Purchased a Used Vehicle But Hasn't Received Title

Moira Rose bought a used car from Harry Wormwood. She paid the man \$25,000 dollars for the car and after 61 days, she still hasn't received the **Certificate of Vehicle Title**? What should Moira do now for she cannot title and register the vehicle (and therefore drive the vehicle)? K.S.A. 2023 Supp. 8-135(b).

The first question you ask is whether seller is a Kansas Dealer. If the seller is not associated with a Kansas Dealer (or a dealer in another state), then the vehicle was a purchased in a private party transaction and her protections are much reduced. Moira may be left with self-help measures through civil action against the businessman for deceptive practices and/or quiet the title. To determine if a seller is a Kansas dealer – you can contact KS DOV Dealer Licensing at (785) 296-3621, select Option 6.



# Your Wife Moira Purchased a Used Vehicle But Hasn't Received Title

There are many other Government Offices that are committed to the work of protecting the rights of consumers defrauded in vehicle sales:

- 1) Kansas Attorney General (<https://www.ag.ks.gov/complaint-center>);
- 2) Sedgwick County District Attorney;
- 3) Johnson County District Attorney;
- 4) KDOR Office of Special Investigations/Division of Vehicles  
([https://www.kdor.ks.gov/Apps/MotorVehicles/motorvehicle/dealer\\_complaint\\_form](https://www.kdor.ks.gov/Apps/MotorVehicles/motorvehicle/dealer_complaint_form))

The authority of each of these agencies to help is limited by the circumstances, however, and the farther your Moira gets away from the seller being a Vehicle Dealer (K.S.A. 2023 Supp. 8-2401(a)) and/or Supplier (K.S.A. 60-624(l)), the less the State and your local DA can do to help you. **BEWARE OF FACEBOOK MARKETPLACE AND CRAIGSLIST LISTINGS** and private party vehicle sales.

# Your Wife Moira Purchased a Used Vehicle But Hasn't Received Title

Even in private party situations, KDOR can provide some help in being a “friendly defendant” that you can sue to quiet title the vehicle in your wife’s name. KDOR is sued approximately a thousand times a year in State district courts to quiet title, for only the district courts have authority to establish lawful ownership in the absence of an assigned certificate of title.

If the seller is a Kansas Dealer, you are in a better position. Consumer protections in K.S.A. 8-2401 et seq., K.S.A. 2023 Supp. 8-135(c)(6), and K.S.A. 50-623 *et seq.* kick into effect.

You can always find the Kansas Dealer because they must have an established place of business and the owner’s identity and address is on file with the Kansas Dealer Licensing Office.

Even if you can contact a non-dealer seller, the individual may be judgment-proof / broke. As a condition of having a Kansas Dealer license, the Dealer must have in effect a \$50,000 bond to cover damages incurred by retail purchasers. If the Dealer doesn’t deliver title within 60 days, your wife has a solid cause of action (K.S.A. 8-135(c)(6) and K.S.A. 8-2410) and reliable monetary source for collecting damages. See K.S.A. 2023 Supp. 8-2404(i). The Director of Vehicles has awarded million(s) of dollars in bond awards over the last twenty years based on application of K.S.A. 2023 Supp. 8-2404(i), but such process will normally require the retail customer hire a lawyer or work with her local prosecutor’s office. (It can also be done pro se and through small or limited actions).

# NOW, FOR THE BEST ADVICE

For seminar participants who actually read through all the provided materials and are still here during the last segment on a Friday afternoon - I will provide you with the Kansas Department of Revenue's (KDOR) secret weapon.

KDOR has a taxpayer advocate, and he has seen it all, especially when it comes to taxes. His name is Bob Clelland and he can be reached at [Bob.clelland@ks.gov](mailto:Bob.clelland@ks.gov).

The next time you go to the Thanksgiving dinner with relatives you see once a year, or the 4th of July party with friends you see every two years or so, you will now be prepared. In some of these groups you will be the only lawyer they know, and they have been waiting months, maybe years, to get this free legal advice, so don't let them down. Just remember, to be clear on whether the conversation does or does not create an attorney client relationship and clear on the level of confidentiality expected.