

**138.880 Notification of Department of Revenue by Commonwealth's attorney or county attorney of nonpayment of tax after conviction or plea -- Filing of notice of lien -- Release of lien.**

- (1) Each Commonwealth's attorney or county attorney in this state who obtains a conviction of, or a guilty or Alford plea from, an offender for violating KRS Chapter 218A shall, within seventy-two (72) hours after the conviction or the plea, notify the department in writing if the offender has not paid the tax imposed by KRS 138.872 as evidenced by the absence of the tax stamps, labels, or other official tax indicia required to be affixed to the marijuana or controlled substance that was the subject of the conviction or plea. The weight or dosage units prescribed in this subsection shall include the weight of the marijuana or the weight or dosage units of the controlled substance, whether pure, impure, or diluted. The notice required in this subsection shall be submitted in the manner prescribed by the department and shall include:
  - (a) The name, address, and Social Security number of the offender from whom the conviction or plea was obtained;
  - (b) The type and quantity of the items that were the subject of the conviction or plea;
  - (c) Any information developed during the course of the investigation regarding any real or personal properties owned by the offender from whom the conviction or plea was obtained; and
  - (d) Other information the Department of Revenue may require to facilitate the assessment and collection of the tax due pursuant to KRS 138.872.
- (2) To facilitate collection of the tax due pursuant to KRS 138.872, the Commonwealth's attorney or county attorney shall, as an authorized agent of the department, simultaneously file a copy of the notice required pursuant to subsection (1) of this section with:
  - (a) The county clerk of the county in which the conviction or the guilty or Alford plea was entered;
  - (b) The county clerk of the county in which the offender resides if different from the county in which the conviction or plea was entered;
  - (c) The county clerk of any other county in which the Commonwealth's attorney or county attorney reasonably believes the offender from whom the conviction or plea was obtained owns real or personal property; and
  - (d) Each financial institution or other custodian the Commonwealth's attorney or county attorney reasonably believes possesses any funds, safe deposit box, or other assets owned in whole or in part by the offender from whom the conviction or plea was obtained.
- (3) The notice required by subsection (2) of this section shall be a lien in favor of the Commonwealth pursuant to KRS 131.515 to secure payment of the tax, penalty, and interest due. The tax shall be and remain a lien upon the property, and all property subsequently acquired, and may be enforced as other liens on similar property are enforced. The lien may be released only upon written notice from the department

that:

- (a) The tax, penalty and interest due pursuant to KRS 138.872 and 138.889 have been paid;
  - (b) A bond has been given to the department as provided in KRS 131.150; or
  - (c) The tax, penalty, and interest are determined by the department not to be due.
- (4) The county clerk recording or releasing a state tax lien pursuant to this section shall be entitled to the fee prescribed therefor by KRS 64.012.
- (5) Except as necessary to accept taxes that the offender voluntarily pays under KRS 138.874, the department shall not require a bond or otherwise attempt to collect the tax due under KRS 138.874 until the offender's taxable activity results in a conviction or a guilty or Alford plea for a violation of KRS Chapter 218A. However, the department may impose a notice of lien on issuance of a warrant or indictment, which shall be released upon acquittal or dismissal of the case.

**Effective:** January 1, 2010

**History:** Amended 2009 Ky. Acts ch. 10, sec. 52, effective January 1, 2010. -- Amended 2005 Ky. Acts ch. 85, sec. 402, effective June 20, 2005. -- Amended 2001 Ky. Acts ch. 155, sec. 5, effective June 21, 2001. -- Created 1994 Ky. Acts ch. 315, sec. 6, effective July 15, 1994.