



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

June 11, 1975

ATTORNEY GENERAL OPINION NO. 75-240

Honorable Robert F. Bennett
Governor, State of Kansas
State Capitol Building
Topeka, Kansas 66612

RE: Income Tax - Withholding Estimated Tax
K.S.A. 79-3297(a) Change in Percentage
Rate of State Withholding Tax

Dear Governor:

Your letter of June 5, 1975, states an administrative problem in the collection of Kansas state income withholding tax, created by the passage of the Federal Tax Reduction Act of 1975 which lowered federal withholding rates for one year.

K.S.A. 1974 Supp. 79-3296 provides that Kansas employers required under federal law to withhold from wages shall also withhold 10% of the amount required under federal law to be withheld for Kansas income tax purposes. K.S.A. 1974 Supp. 79-3297(a) provides that the Secretary of Revenue shall change the percentage of withholding for Kansas tax "when such rate no longer bears the proper correspondence to the employee's income tax. Any such change in the state rate shall be in proper proportion to the amount of increase or decrease in the federal withholding tax, so that the rate as changed bears the same correspondence to the employees' income tax liability as the rate now fixed by K.S.A. 79-3296." (Emphasis supplied).

You state that the number of Kansas taxpayers having a balance due on filing their final income tax return is presently 31.5%, and that this number will increase if the Kansas withholding rate is not increased.

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You pose the question whether 79-3297(a) "is mandatory on the Secretary or does he have discretion not to make modifications even though the federal withholding tax rate has been changed?" You add that you prefer to recommend that "we leave the present rate alone at the present time."

In our opinion, the Secretary of Revenue is vested with discretion, under 79-3297(a), not to make any immediate modification in the Kansas Withholding Tax Rate under the circumstances presented by a temporary or indefinite reduction in the federal rate. As you point out, the proportion is not subject to an exact mathematical correspondence.

In Crawford Manufacturing Co. v. State Comm. of Revenue and Taxation, 180 Kan. 352, 362, 304 P.2d 504 (1956), it is stated:

"The duty to administer and enforce the Kansas Income Tax Law is cast upon the Director of Revenue under the supervision and direction of the commission, and the legislature has given him full jurisdiction to accomplish this purpose. (G.S. 1949, 74-2415, 74-2422, 79-3209, 79-3219.) This is an administrative duty and not a judicial one. (Montgomery Ward & Co. v. State Tax Comm., supra.) In carrying out this duty he must guard against being arbitrary or capricious, and where the provisions of the statute are clear, he must follow them. It is his duty to see that the proper method of allocation is justly and equitably applied but arithmetical accuracy is not generally possible in this difficult field. All methods of allocation, direct or separate accounting as well as the factor formula, contain estimates and, in varying degrees, are applied by the exercise of human judgment. If the method adopted accords with our statutes and regulations and produces an allocation approximately correct, although not meticulously precise, and is arrived at by the exercise of fair human judgment so that it reasonably attributes income allocable to property owned and business transacted within this state, it meets the test of being just and equitable. So long, therefore, as he acts within the scope and intent of the statutes and regulations, free from arbitrary, unreasonable

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or capricious action, his determination, subject to the supervision and direction of the commission, of questions arising out of the administration of this law, is final and conclusive and on appeal the only question for review is whether he so acted."

In our view, the use of the word "proper" in the context of K.S.A. 79-3297(a) infers the use of an independent judgment considering changing and often complex circumstances. It is clear that the legislature, as well as the Kansas courts, have over the years recognized this fact as being necessary to the orderly administration of the State Income Tax Law.

The rate establishing the "proper correspondence" is to be fixed by the Secretary of Revenue by the promulgation of administrative rules and regulations. (KAR 92-11-1 through 92-11-23). It is well established that challenges concerning rules and regulations will not be sustained unless such rules and regulations are found to be unreasonable, arbitrary and capricious or not with the statutory authority conferred upon the agency.

We are hopeful the foregoing will be of assistance.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General

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