



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 2, 1976

ATTORNEY GENERAL OPINION NO. 76-48

Mr. Leonard M. Robinson
County Attorney
Wabaunsee County Courthouse
Alma, Kansas 66401

Re: Lands omitted from tax rolls. Collection, penalties and interest. K.S.A. 79-417, K.S.A. 1975 Supp. 79-1701 et seq., 79-2001.

Synopsis: When, through the mistake or inadvertance of a County Treasurer, no entry of delinquent real estate taxes is made on the tax rolls, no penalty or interest computed, no notice given to the taxpayer either by mail or publication, all as required by K.S.A. 1975 Supp. 79-2001, the taxes shall be collected under K.S.A. 79-417, and interest and penalties will then commence to run. Where a taxpayer pays his back taxes in full, together with back penalties and interest which would have accrued if K.S.A. 1975 Supp. 79-2001 had been followed, he should be reimbursed for such penalties and interest by the Board of County Commissioners under K.S.A. 1975 Supp. 79-1701a, either as a refund or credit on his current year's taxes for the overpayment made.

* * * *

Dear Mr. Robinson:

You state a situation where a land owner failed to pay his 1963 and 1964 taxes, but the County Treasurer did not list on the tax rolls of subsequent years such delinquent taxes, did not compute penalties and interest, did not mail notice of the delinquencies to the taxpayer, and did not publish notice of such delinquent taxes, in violation of K.S.A. 1975 Supp. 79-2001.

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Instead the County Treasurer commenced to send tax statements in 1965 and subsequent years to the taxpayer as if there was no delinquency, which taxes have all been paid. You say the laws for tax sales and foreclosure were never enforced against this taxpayer because of this lack of record, and the error was just discovered in 1975 while preparing for a general tax sale.

Further, you state that this taxpayer had sold his property in 1972, free and clear of all encumbrances, because even the abstractor guaranteed clear title showing 1971 and prior year's taxes paid in full. He found no records in the Treasurer's office that the taxes had not been paid.

Upon receiving a tax statement for these back taxes, together with all penalties and interest, on November 1, 1975, this taxpayer paid the entire statement to honor his warranty deed. He now complains and you ask what can be done about this.

"The rule is well known that in the construction of legislation, courts may look to the purpose and intent of the legislature in its enactment. . . . Government is indispensable to any civilized society and an orderly system of assessment and collection of taxes is an imperative to a government's successful operation." Northern Natural Gas Co. v. Bender, 208 Kan. 135, 140, 490 P.2d 399, cert. den. 406 U.S. 964, 967, 92 S. Ct. 2408, 32 L. Ed.2d 665 (1971)

The Kansas Supreme Court has also held that where owners of land sold at a tax foreclosure sale had no personal notice, whose names and addresses were readily ascertainable from examination of county records, the tax sale was void and the deed set aside, even though the taxpayer did not complain for 3 1/2 years after confirmation. Chapin v. Aylward, 204 Kan. 448, 464 P.2d 177 (1970).

It is plain that it is the intent of the Courts and the legislature that the orderly system of tax collection as provided by statute must be followed, and taxpayers have the right to rely on it. They have a right to expect notice of delinquent taxes, or tax sales.

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Where land has escaped taxation in former years, when the discovery is made, it shall be put on the tax rolls and charged with taxes equal to and in accordance with the tax levies that would have been charged had they been properly listed and assessed. K.S.A. 79-417. When back taxes are collected on land, interest and penalties are exempt. K.S.A. 79-418. Undoubtedly, the reason for not adding penalties and interest, was that the failure to list delinquent taxes was the clear fault of county officials.

When personal property has escaped taxation, there is a time limit for going back of five years. Where the escaped taxation was due to the error of county officials, it specifically provides that no penalty and interest will be assessed. K.S.A. 79-1427.

It is our opinion that in this instance the taxpayer should pay the taxes on his land. These taxes were apparently due and are unpaid. There is no time limit on going back to collect real estate taxes. But he should not be compelled to pay penalties and interest. To so charge him with penalties and interest was an error or irregularity which should be corrected by the Board of County Commissioners before August 1, 1976, under K.S.A. 1975 Supp. 79-1701a, and the taxpayer given the option to take a refund of his excessive payment, or credit for that amount on his current year's taxes.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm