

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 69

Mr. Richard E. Samson
Stevens County Attorney
Stevens County Courthouse
Hugoton, Kansas 67951

RE: Motor Vehicles--Mobile Homes--Taxation--Special
Listing Laws.

Synopsis: The valuation and listing for taxation of motor vehicles and mobile homes has by law been made automatic and occurs at the time of registration or annual registration renewal. All necessary information to make such valuation and listing is furnished by the County Treasurer to the County Appraiser at the time of such registration. It is not proper to require a taxpayer, in addition to such registration, to file a general personal property return again listing such automobiles and mobile homes, or to impose penalties for failure to file such form, after proper registration has been made with the County Treasurer, unless the taxpayer owns other personal property subject to taxation.

* * *

Dear Mr. Samson:

Your inquiry arises because a taxpayer, owning a 1973 Mercury, a 1971 Ford Pick-up and a 1974 Lancer Mobile Home failed to file prior to March 1, 1976, with the County Assessor, as required by K.S.A. 1976 Supp. 79-306b, the form for tangible personal property listing the above vehicles. As a result of such failure a 50% penalty was assessed against this taxpayer under K.S.A. 1976 Supp. 79-1422, and you ask

if this assessment of penalty was erroneous. You say that the Stevens County officials relied upon K.S.A. 79-306 and 79-306b, which requires all persons to list tangible personal property by March 1.

We understand the facts to be that the taxpayer lived in Leavenworth County, Kansas in 1974 and paid taxes on the said vehicles in that county in 1974. Late in 1974 he moved to Stevens County. Before March 1, 1975, the taxpayer did fill out the form listing the vehicles for taxation in 1975 in Stevens County, was billed, and did pay those taxes.

We further understand that the taxpayer, whose last name begins with the letter "P", in September, 1976 did properly renew registration of all three of said vehicles with the County Treasurer of Stevens County. He showed tax receipts of having paid all 1975 taxes. His new registration tags were issued to him without objection, even though no personal property form had been filed with the Assessor in Stevens County by March 1, 1976.

We further understand that Leavenworth County is one of the more populous counties in the eastern portion of Kansas, which place motor vehicles automatically on the tax rolls when cars are registered under K.S.A. 1976 Supp. 79-306c, because the County Assessor receives all the information necessary to make a proper listing and the statute mandates the assessor to place the vehicle on the tax rolls. K.S.A. 1976 Supp. 79-335 does the same for mobile homes. The taxpayer states that he relied upon Stevens County to similarly interpret these statutes, and so did not file any additional personal property form by March 1, 1976. When he did not get any tax statement on November 1, 1976, he voluntarily asked why, and on December 9, 1976, he was given "added tax" statement #1527 from Stevens County for \$300.61, which contained a 50% penalty of \$100.20.

The taxpayer has appealed to the Stevens Board of County Commissioners to correct, under K.S.A. 1976 Supp. 79-1701a, a clerical error in the tax rolls caused by the improper assessment of a penalty of 50%, and you request our opinion.

It is our opinion that K.S.A. 1976 Supp. 79-306c and K.S.A. 79-335, create a classification of motor and mobile home vehicles for ad valorem tax purposes; that such statutes provide an exclusive taxation procedure; that such classification is natural and genuine and based upon reasonable and substantial distinctions of such vehicles as compared to personal property generally; and that, because

of such distinctions, such statutes comply with Article 11, Section 1 of the Kansas Constitution, because they operate uniformly on all such vehicles in the state.

Numerous decisions could be cited, but the constitutionality of K.S.A. 1976 Supp. 79-306c, was upheld by the Kansas Supreme Court in State, ex rel v. Dwyer, 204 Kan. 3, 460 P.2d 507 (1969). In doing so, the Court noted that there were general statutes pertaining to the assessment of personal property and a certain date of listing, but said that pro rata assessment was distinguishable. The Court pointed to such laws as K.S.A. 79-316 fixing a procedure for listing property brought into the state after January 1 and prior to July 1; K.S.A. 79-316b and 79-316c, for pro rata assessment of cattle which are in Kansas only part of the year; K.S.A. 79-1001 et seq., which require merchants and manufacturers to file a monthly average basis; K.S.A. 79-1434 pertaining to taxing of personal property of transient merchants; K.S.A. 79-907 which taxes leased railroad cars on a percentage of gross earnings; and then the Court concluded that personal property of such a nature was not amenable to the ordinary taxing processes and, absent a particular method as embodied in the act taxing it, could not be taxed at all. (Dwyer, supra, pages 5-7).

The Court further observed that an inquisitorial process was generally required to discover personal property to be listed for taxation, and that a state might properly avoid this expense. The Court concluded:

"Our registration laws do provide a ready method for ascertainment of ownership of motor vehicles. If anything it would appear the latter situation results in greater uniformity and equality in the taxing structure. We think the legislature had tax reform in mind in enacting the legislation questioned here."
(Dwyer, supra. Page 8).

When K.S.A. 79-306c was first enacted, it provided that the owner at the time of filing application for registration or renewal thereof, must also file a form listing the vehicle for taxation with the County Treasurer, who would transmit it to the County Assessor. The County Assessor then was mandated to value the vehicle and place it on the tax rolls. In the 1971 session K.S.A. 79-306c was changed to eliminate the necessity of the County Treasurer handling this form. As amended this section still mandates the county assessor to place the vehicle on the tax roll, and by a new subparagraph (d) the County Treasurer was mandated to transmit to the assessor title inform-

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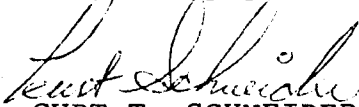
ation. In our opinion this amendment did not indicate any legislative intention to alter the policy of an automatic listing of vehicles by the assessor on the tax rolls for taxation purposes.

This conclusion is further fortified by the fact that in 1970 the legislature passed K.S.A. 79-335, pertaining to the automatic listing of mobile homes, using the exact original wording of K.S.A. 79-306c, and that wording is still there. The taxpayer's mobile home should have been on the 1976 Stevens County tax rolls if the taxpayer registered it in 1976 and K.S.A. 1976 Supp. 79-335 is followed.

Other statutes, which tie in with the legislative tax scheme on vehicles, are K.S.A. 8-173, 8-174 and 8-175. These statutes show the legislature expects the County Clerk and the County Treasurer to work together that there may be instant listing and assessment of vehicles and instant collection of taxes, even if a valuation and assessment must be made right then and there. No mention whatever is made about a penalty for late filing.

It is our opinion that it was an unjust extension of taxes and a clerical error for this taxpayer to be assessed a 50% penalty for late filing under K.S.A. 79-1422, and that this error should be corrected by the Stevens Board of County Commissioners under K.S.A. 1976 Supp. 79-1701a.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw