



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 30, 1977

ATTORNEY GENERAL OPINION NO. 77- 219

Constance M. Achterberg
Assistant County Attorney
116 South 7th Street
Salina, Kansas 67401

RE: Taxation - Penalties For Failure to File -
Waiver

SYNOPSIS: Where a merchant fails to file his personal property return within the time limit specified by law, and the County Clerk has assessed the statutory penalty in the absence of any request for extension of time, the Board of County Commissioners, sitting as the County Board of Equalization has no authority to waive such penalty.

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Dear Assistant County Attorney:

You state that a merchant in your county failed to file his personal property tax return by March 1 and did not make any request for an extension of time to make such filing. Ten days after filing date the merchant did file. The County Clerk, following K.S.A. 1976 Supp. 79-1422, assessed a 10% penalty. The merchant has now asked the Board of County Commissioners to waive such penalty, and you ask if that Board has authority to do so.

The assessment of the penalty by the Clerk is a statutory mandate. The law says the County Clerk "shall" add 10% to the assessed taxable value as a penalty for late filing without an extension. This is not a valuation or assessment function. It is a sanction imposed by the legislature to make timely rendition. Walkemeyer v. Stevens County Oil & Gas Co., 205 Kan. 486, 492, 470 P.2d 730 (1970).

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Walkemeyer involved assessment of a penalty in an oil and gas rendition under K.S.A. 79-332(1). It was a personal property rendition filed after time without request for extension under a statute which has the exact same wording as K.S.A. 1976 Supp. 79-1422. The State Board of Tax Appeals undertook to reverse the County Clerk upon the assessment of the penalty, and the Kansas Supreme Court held that such an action was beyond the power and authority of that Board sitting as the State Board of Equalization.

Walkemeyer, in our opinion, applies to your situation. The Board of County Commissioners is sitting as the County Board of Equalization, and the authority of that Board is restricted to matters of valuation and assessment. Where self assessment statutes are involved, timely filing is of the essence, and the legislative mandate is that a graduated scale of penalties shall be assessed unless the taxpayer requests and obtains an extension of time to file prior to the expiration of the statutory filing date.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw