



STATE OF KANSAS

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April 12, 1979

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ATTORNEY GENERAL OPINION NO. 79-56

Ms. Ruth Vervynck
Douglas County Treasurer
Douglas County Courthouse
Lawrence, Kansas 66044

Re: Taxation--Property Valuation, Equalization,
Assessment--Assessment of Escaped Personal
Property

Synopsis: When, for any reason, any portion of the fair market value of any taxable tangible personal property has escaped taxation in any year or years, within five (5) years next preceding, the county assessor is charged with the duty of listing, appraising and assessing the same pursuant to K.S.A. 79-1427.

* * *

Dear Ms. Vervynck:

You inquire as to what procedure, if any, is available to remedy any underassessment regarding a motor vehicle.

You indicate that a Douglas County taxpayer received a 1978 personal property tax statement showing the assessed value of his automobile to be \$230.00; whereas, said automobile should have been assessed at \$2300.00. The error was not discovered until the taxpayer, sometime after November 1, 1978, attempted to pay his tax. Apparently, the taxpayer was not allowed to pay the amount of tax shown due on his statement. In addition, you advise that it has been suggested that once property has been assessed, it cannot be re-assessed to correct errors in its valuation.

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Resolution of your inquiry should begin with the oft-cited rule that the legislature, in establishing an orderly scheme of taxation for a given year, has recognized that there must be a final cut-off date in our taxing system as a matter of practical necessity. [State, ex rel., v. Dwyer, 204 Kan. 3, 9 (1969); Mobil Oil Corporation v. Medcalf, 207 Kan. 100, 107 (1971); and Benn v. Slaymaker, 93 Kan. 64, 67 (1914).] That is, there must be a date beyond which transactions affecting property do not affect the listing, appraisal, assessment and taxation thereof. However, if such an error as is involved herein is discovered by the cut-off date, remedial procedures are provided by statute. See K.S.A. 79-312 and 79-1432.

However, under the facts of this case as you relate them, the cut-off date for tax year 1978 in regard to motor vehicles had passed when the error involved herein was discovered. Therefore, the time for resorting to any such statutory procedure for correction of this error for tax year 1978, including the remedial procedure prescribed by K.S.A. 79-312 and 79-1432, had passed. Consequently, it is our opinion that it is impossible to increase the assessed value of this motor vehicle during tax year 1978 and require the taxpayer to pay the increased amount of tax. Gas Co. v. Crawford County Comm'rs., 139 Kan. 452 (1934). The taxpayer's financial obligation is the amount shown on his 1978 personal property tax statement and he must be allowed to pay the same.

The foregoing does not mean, however, that \$2,070.00 worth of personal property is to go untaxed forever. K.S.A. 79-1427, in relevant part, provides:

"If the assessor shall discover that any tangible personal property, which was subject to taxation in any year, has not been assessed, or for any cause any portion of any tangible personal property has escaped taxation in any year or years, within five (5) years next preceding, it shall be the duty of the assessor to list and appraise such property at twice its fair market value in money for each such year during which such property, or any portion thereof, was not appraised, and to assess the same, as required in K.S.A. 79-1439, and it shall be designated on his or her return as 'escaped assessment' for the preceding year or years,

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and he or she shall indicate in his or her return the year or years for which such escaped assessment or assessments is made . . . Provided, That in the event that such escaped assessment is due to error of any assessor . . . then such escaped assessment shall be appraised at its fair market value in money and assessed as required by K.S.A. 79-1439. [Emphasis added.]

While our research has revealed Kansas Supreme Court cases applying these statutory provisions, we have found no Kansas case in which interpretation of this statute was at issue. However, from our reading of this statute, we have concluded that the legislative intent underlying its enactment was to provide a procedure whereby all tangible personal property subject to general property taxes can be appraised uniformly and equally at its fair market value in money (K.S.A. 79-503, 79-306b and 79-1439) and assessed at thirty percent (30%) thereof, notwithstanding failure to make, or errors or other irregularities in, the initial appraisal thereof.

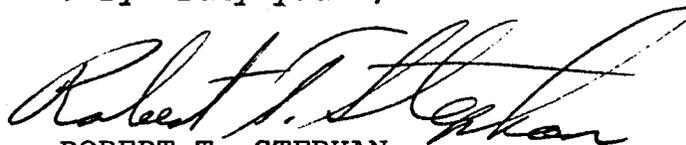
In support of our conclusion, we rely on State, ex rel. v. Williams, 139 Kan. 599(1934). That case involved state assessed railway property. After proper appraisal and assessment by the state tax commission, the county clerk of Reno County, Kansas, apportioned said assessment to one school district, when it should have been apportioned to another. The railway company paid its tax obligations in full. The suit was a mandamus action against the county clerk of Reno County, Kansas, to compel said clerk to place 5.48 miles of main-line right-of-way of said railway company on the tax rolls of the proper district pursuant to K.S.A. 79-1427, the "escaped-assessment statute." The railway company was named as a party defendant.

The railway company argued that the right-of-way in question had not "escaped assessment" under the provisions of K.S.A. 79-1427, since the property was duly assessed. Id. at 604. In rejecting this argument, the court said that the payment of taxes by the railway company in the wrong district was voluntary and, in effect, was no payment at all. For this reason, the court found that the 5.48 miles of right-of-way was property that had escaped taxation under the provisions of K.S.A. 79-1427, and the court required that the right-of-way again be placed on the tax rolls in the appropriate district. Id. at 607.

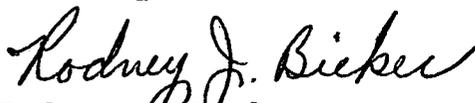
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In applying K.S.A. 79-1427 in light of the Williams case, the fact that property has been appraised and assessed does not bear upon the issue of whether said property has escaped taxation. Therefore, as applied to your inquiry, it is our opinion that the prior, erroneous assessment of the taxpayer's automobile has absolutely no effect on the duty of the assessor to correctly list, appraise and assess said automobile pursuant to K.S.A. 79-1427. However, since only a portion (\$2,070) of the assessed value of the tangible personal property has "escaped taxation," the return prepared by the assessor in accordance with this statute should include only this amount. It is our further opinion that since the escaped assessment was due to the error of the assessor, the proviso contained in said statute is applicable and the property should not be listed at twice its fair market value.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk