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August 7, 1979

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ATTORNEY GENERAL OPINION NO. 79-166

Mr. Stephen W. Boyda
Marshall County Attorney
P.O. Box 207
Marysville, Kansas 66508

Re: Taxation--Listing Property for Taxation--Final
Filing Date

Synopsis: Pursuant to the provisions of K.S.A. 79-306 and 79-1422, the final date upon which statements listing the tangible personal property of individual taxpayers must be filed before a penalty for late filing will be assessed is the last day of February.

* * *

Dear Mr. Boyda:

You request our opinion as to the final date upon which lists by individual taxpayers of their tangible personal property for purposes of taxation must be filed before a penalty for late filing will be assessed. You indicate that some counties follow the view that no penalty should be assessed if such statements are filed on or before March 1, while others assess a penalty if the statement is not filed on or before the last day of February.

The statutory provisions pertinent to your inquiry are those contained in K.S.A. 79-306 and 79-1422. The latter statute establishes varying amounts of penalty to be assessed by the

Mr. Stephen W. Boyda
Page Two
August 7, 1979

county assessor for failure to timely file, with said amounts varying according to the number of days that the filing is overdue. However, it provides in relevant part:

"In case any person required to file a statement of assessment under the provisions of this act fails to make and file such statement on or before the date prescribed by K.S.A. 79-306, and amendments thereto" (Emphasis added.)

Thus, the county taxing officials must look to the provisions of K.S.A. 79-306 in order to determine the final filing date. Said statute, in pertinent part, provides:

"Between January 1 and March 1 of each year, every person, except a corporation, domestic or foreign, in which case the filing date shall be April 1, required by this act to list property shall make and sign a statement listing all tangible personal property which by this act he or she is required to list . . . and deliver the same to the county assessor of the county where such property has its situs for the purpose of taxation: Provided, That property of merchants required to list property under the provisions of K.S.A. 79-1001a shall be listed and filed on or before April 15, of each year."
(Emphasis added.)

A review of the legislative history of K.S.A. 79-306 reveals that, until amended in 1965, it did not contain any specified date as to when lists of tangible personal property were required to be filed. Prior to the 1965 amendment, the pertinent provision read as follows:

"Every person required by this act to list property when called upon by the county

Mr. Stephen W. Boyda
Page Three
August 7, 1979

assessor, or by any deputy assessor of his city or township, shall make out and verify by his oath a statement of all tangible personal property which by this act he is required to list"
(Emphasis added.)

The provisions of the statute above quoted are virtually the same as those used by the legislature when the statute was first enacted in 1876. L.1876, ch. 34, § 9. However, the 1965 Legislature amended the statute (L.1965, ch. 511, § 3) to read in relevant part, as follows:

"Between January 1 and March 1 of each year, every person required by this act to list property shall make and sign a statement listing all tangible personal property which by this act he is required to list . . . and deliver the same to the county assessor of the county where such property has its situs for the purpose of taxation."

As is apparent by reading the provisions of K.S.A. 79-306 as said statute currently exists, this language has not been modified, although, in both 1968 and 1972, the statute was amended to provide final filing dates for corporations and merchants different than that fixed for individual taxpayers. This fact convinces us that there has been no change in the legislative intent to require individual taxpayers to file their statements, listing all their tangible personal property, "[b]etween January 1 and March 1 of each year." The question then becomes whether the legislature intended such time period to include January 1 and March 1, as well as the intervening dates.

One rule of statutory construction consistently applied by the Kansas Supreme Court in determining legislative intent is that words are to be given their ordinary meanings in the English language. Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211 (1976); Hessell v. Lateral Sewer Dist. No. T-39, 202 Kan. 499 (1960); and Roda v. Williams, 195 Kan. 507 (1965).

Mr. Stephen W. Boyda
Page Four
August 7, 1979

In addition, K.S.A. 77-201, Second, in part, provides: "Words and phrases shall be construed according to the context and approved usage of the language" Following these rules, it is noted that Webster's New Collegiate Dictionary 81 (15th ed. 1965) defines "between" as "in the time space, or interval that separates." Also, Blacks Law Dictionary 204 (4th ed. 1957) defines "between" as:

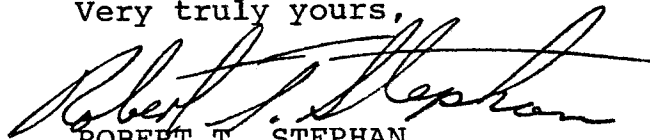
"A space which separates. [Cite omitted.]

. . . .

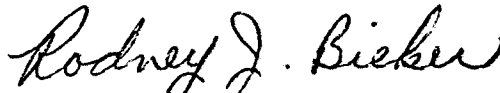
"If an act is to be done 'between' two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded."
[cite omitted.] (Emphasis added.)

Given these definitions, we are of the opinion that the legislature, in using the term "between," did not contemplate the inclusion of the dates which are separated (January 1 and March 1), but rather, intended to include only the intervening dates. Thus, in our opinion, the date prescribed in K.S.A. 79-306 which triggers the penalty provisions of K.S.A. 79-1422, is the last day of February, not the first day of March.

Very truly yours,



ROBERT T. STEPHAN
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RTS:BJS:RJB:jm