



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 14, 1981

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-8

Mr. Fred Warders  
Assistant Director  
Kansas Fish and Game Commission  
Box 54A, Rural Route 2  
Pratt, Kansas 67124

Re: Taxation--Income Tax--Designation of Income Tax  
Refund for Nongame Wildlife Improvement Program

Synopsis: The Kansas Department of Revenue may reduce or eliminate a taxpayer's donation to the Kansas Nongame Wildlife Improvement Program when the Department has, upon examination of the taxpayer's tax return, reduced the amount of a refund claimed by the taxpayer. Cited herein: K.S.A. 1980 Supp. 79-3221d, 79-3221e.

\* \* \*

Dear Mr. Warders:

You request our interpretation of K.S.A. 1980 Supp. 79-3221d, which statute allows a Kansas taxpayer to donate a portion of his or her income tax refund to the Kansas Nongame Wildlife Improvement Program. A tax instruction adopted by the Kansas Department of Revenue (for use with the Kansas Individual Income Tax Form, K-40) advises taxpayers that if a refund claim is decreased upon examination by the Department of Revenue, "the wildlife contribution will be reduced by that amount." You inquire as to whether the Department of Revenue has the authority to reduce or eliminate a donation in this manner.

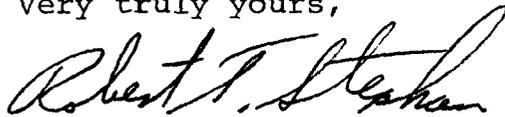
There is no specific authority within K.S.A. 1980 Supp. 79-3221d for reducing the amount of a donation (to the wildlife program)

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made by a taxpayer from his or her tax refund, nor is there any such authority within K.S.A. 1980 Supp. 79-3221e, providing for disposition of the donated moneys. However, when a tax return has been examined or audited and the refund reduced, there has occurred a change of circumstance which may affect the taxpayer's decision regarding the amount of the donation. The statute is silent as to whether the original donation is to remain intact, or whether the reduction in the refund should be offset by a reduction or elimination of the donation. Because of the hiatus created by the legislature's silence on these matters, there is an ambiguity as to the statute's meaning, thus creating the necessity for administrative interpretation.

In this regard, it is to be noted that, where a statute is ambiguous and the intent of the legislature is not clear, the interpretation placed upon the statute by an administrative body, whose duties are to carry the legislative policy into effect, should be given great weight. Bill George Chrysler-Plymouth, Inc. v. Carlton, 216 Kan. 365, 370 (1975); United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 107 (1975). The interpretation of the Department of Revenue, as reflected in the above-referenced tax instruction, recognizes that the designation prescribed by K.S.A. 1980 Supp. 79-3221d, and to be included on the Kansas Individual Income Tax Return, fails to give the taxpayer any notice that a donation could be deducted from a refund, even if the refund were reduced substantially upon examination by the Department. In our opinion, if the legislature had intended the designation on the income tax return to be absolute and irreversible, it would have prescribed a designation form which provided reasonable notice of such fact to the taxpayer. Additionally, under the tax instruction adopted by the Department of Revenue, a taxpayer, whose donation to the wildlife program has been reduced or eliminated, may still make an independent donation to the fund. Considering all the circumstances cited above, we cannot say, as a matter of law, that the subject tax instruction is outside the authority of the Kansas Department of Revenue.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General