



STATE OF KANSAS

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March 4, 1981

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ATTORNEY GENERAL OPINION NO. 81-59

Mr. Bill Cooper
Thomas County Appraiser
Box 645
Colby, Kansas 67701

Re: Taxation--Listing Property For Taxation--Personal
Property to be Listed by the Person in Possession
Thereof

Synopsis: Tangible personal property in the possession of
a merchant on the annual assessment date (i.e.,
January 1), may or may not be owned by the merchant.
However, regardless of the ownership of such property,
it is the duty of the merchant to list such property
for purposes of taxation. Cited herein: K.S.A.
79-301, 79-303, 79-304, 79-1001a.

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Dear Mr. Cooper:

You explain that many farmers in Thomas County are taking
advantage of a purchase plan for farm machinery whereby in November
or December, they "trade-in" their old equipment for new equipment,
with no payment due until the following July 1. The "old" equip-
ment is delivered to the dealer in November or December, but delivery
of the "new" equipment is delayed until sometime after January 1
of the following year. The farmers decline to list for purposes
of taxation either the "old" equipment or the "new" equipment,
because neither is in his or her possession on January 1. You
inquire who should list the property for taxation and pay taxes
thereon.

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Farm machinery and equipment is tangible personal property. Therefore, pursuant to K.S.A. 79-301, all such property is to be "listed and assessed as of the first day of January each year in the name of the owner thereof."

K.S.A. 79-303, in relevant part, provides:

"Every person, association, company or corporation who shall own or hold, subject to his or her control, any tangible personal property shall list said property for assessment. . . .

. . . .

"If any person, association, company or corporation shall have in their possession or custody any tangible personal property belonging to others not specifically included in the foregoing, it shall be their duty to list such property with the assessor in the name of the owner thereof." (Emphasis added.)

Additionally, K.S.A. 79-304, in relevant part, provides:

"Every person required to list property in behalf of others shall list such property in the taxing districts in which said property is located; but he or she shall list such property separate and apart from his or her own, specifying the name of the person, estate, company or corporation to which the same may belong." (Emphasis added.)

Finally, we also find to be pertinent the following provisions of K.S.A. 79-1001:

"Every merchant shall for the purpose of taxation make and deliver to the assessor a statement giving the fair market value in money of personal property held as inventory within the state of Kansas for sale in his or her business as a merchant."

Based upon the foregoing statutory provisions, it is evident that each item of farm machinery and equipment in the possession of a farm implement dealer, whether or not owned by the dealer, must be listed for taxation by said dealer. If the dealer owns the property, said dealer is required to list it for taxation under the provisions of K.S.A. 79-1001a. If the property is owned by someone else, and is merely in the custody of the dealer, said dealer is required to list the property pursuant to K.S.A. 79-303 and 79-304.

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In our judgment, the appraiser may rely upon the list provided by the dealer and, if the dealer lists property in his or her possession as belonging to another taxpayer, the appraiser may assess the property to the person so named. If that person believes the assessment of the property in his or her name is erroneous, because he or she did not own the property on assessment day (i.e., January 1), said person may pursue an appropriate legal remedy to have the question of ownership resolved.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm