



STATE OF KANSAS

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February 3, 1983

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ATTORNEY GENERAL OPINION NO. 83- 14

E. A. Mosher, Executive Director
League of Kansas Municipalities
112 West Seventh Street
Topeka, Kansas 66603

Re: Taxation--Local Option Gross Earnings (Intangibles)
Tax--Repeal Thereof

Synopsis: The governing body of a county, city or township, which has chosen to impose the local gross earnings tax without a vote of the electorate, may determine subsequently that the tax should not be imposed and, without a vote of the electorate, may repeal the tax. Under such circumstances, the governing body must act, before November 1 of the year for which the tax is imposed, to eliminate the tax. Any attempt to act after this date comes too late. Cited herein: K.S.A. 12-1,101, 12-1,106, K.S.A. 1982 Supp. 79-1803, K.S.A. 79-1804, L. 1982, ch. 63, §§1, 6.

* * *

Dear Mr. Mosher:

You seek the opinion of the Attorney General concerning the following questions: (1) If the governing body of a county, city or township, on its own initiative, adopts a resolution or ordinance imposing the intangibles tax, can the governing body, on its own initiative and without a petition and vote of the electorate, adopt a resolution or ordinance repealing said tax? (2) Assuming a local governing body, on its own

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initiative, can repeal a resolution or ordinance imposing the intangibles tax, what is the latest date by which the governing body must act in order to repeal the resolution or ordinance, under each of the following circumstances: (a) When the resolution or ordinance levied the tax in the years 1982 and 1983, but the governing body desires not to levy the tax in the year 1983; and (b) when the resolution or ordinance levied the tax "for the year 1983 and each year thereafter," but the governing body desires not to impose the tax for the year 1983 or any year thereafter.

Your questions, of course, concern the provisions of 1982 House Bill No. 3142 (HB 3142), now found in chapter 63 of the 1982 Session Laws of Kansas. The non-amendatory sections of this enactment, commonly referred to as "the new intangibles tax law," are codified at K.S.A. 12-1,101 et seq.

On September 3, 1982, we issued Attorney General Opinion No. 82-189 which concluded that a board of county commissioners, which has chosen to impose the tax authorized by HB 3142 without a vote of the electorate, may determine subsequently that the tax should not be imposed and, without a vote of the electorate, may repeal the county resolution pursuant to which the tax was imposed. Although that opinion concerned the authority of a board of county commissioners, the above conclusion is equally applicable to the governing body of any city or township. Thus, that opinion answers your first inquiry, and instead of repeating here that which was stated in the prior opinion, we simply adopt that opinion herein by reference. If you do not have that opinion, please advise and we will provide it.

Your second inquiry concerns the latest date upon which the governing body of a county, city or township can act to eliminate a gross earnings tax previously imposed by such governing body. Specifically, you inquire by what date the governing body of a county, city or township, which has imposed the gross earnings tax for 1983, must act in order to repeal the tax.

The Kansas Supreme Court, on numerous occasions, has recognized that, in providing revenues with which to carry on the business of government, there must be certainty and stability, and the legislature has established an orderly scheme of taxation to achieve this result. See Mobil Oil Corporation v. Medcalf, 207 Kan. 100 (1971); Mobil Oil Corporation v. McHenry, 200 Kan. 211 (1968); and Benn v. Slaymaker, 93 Kan. 64 (1914). The Court also has said: "The legislature, in establishing an orderly scheme of taxation for a given year, has recognized that there must be a cutoff date (November 1) as a matter of practical necessity."

Mobil Oil Corporation v. Medcalf, supra, 207 Kan. at 107. November 1, of course, is the date on which taxes, including the gross earnings tax on money, notes and other evidence of debt, are due. See K.S.A. 12-1,106 (Section 6 of HB 3142) and K.S.A. 79-1804. Also, November 1 is the date by which the county clerk must have completed the task of preparing the tax roll and delivering it to the county treasurer so that the tax collection process can begin. See K.S.A. 1982 Supp. 79-1803 and Mobil Oil Corporation v. Medcalf, supra.

Based upon the above-cited statutes and decisions of the Kansas Supreme Court, we are of the opinion that November 1 is the "cutoff date," for decisions affecting the orderly scheme of taxation for a given calendar year. Thus, we conclude that the governing body of a county, city or township must act prior to November 1 of each year, in order to repeal the local gross earnings tax for that year, if such is the decision of the local governing body. This means that, if the governing body of a county, city or township, on or before September 1, 1982, decided, on its own initiative, to impose the local gross earnings tax for 1983, the governing body has until November 1, 1983, to repeal the resolution or ordinance pursuant to which the tax for 1983 was imposed. If such action is taken, the tax collection process for this tax will not be activated and, thus, the action of the governing body will not disrupt the orderly system of taxation prescribed by the legislature for financing local units of governments. This is the criteria established by the Kansas Supreme Court for determining the latest date by which decisions affecting the financing of local units of government for a given year must be made. See Mobil Oil Corporation v. Medcalf, supra; Mobil Oil Corporation v. McHenry, supra; State, ex rel., v. Dwyer, 204 Kan. 3 (1969); and Benn v. Slaymaker, supra.

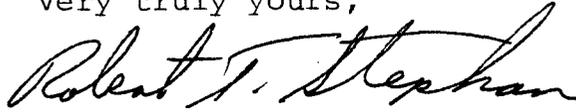
Of course, this opinion is confined to the situation in which the governing body of a county, city or township, on its own initiative, determines that the gross earning tax of the county, city or township should be eliminated. If this determination is made by a vote of the qualified electors of a county, city or township, then the provisions of subsection (e) of K.S.A. 12-1,101 (section 1 of HB 3142) prescribe the action to be taken and the time at which such action is to become operative.

Thus, in summary, it is our opinion that the governing body of a county, city or township, which has chosen to impose the local gross earnings tax without a vote of the electorate, may determine subsequently that the tax should not be imposed and, without a vote of the electorate, may repeal the tax. Under such circumstances, the governing body must act, before November 1 of the

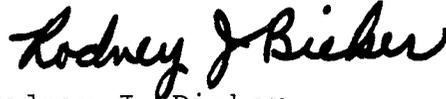
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year for which the tax is imposed, to eliminate the tax. Any attempt to act after this date comes too late.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

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