



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 87- 82

The Honorable Frank Buehler
State Representative
One Hundred Thirteenth District
P.O. Box 317
Claflin, Kansas 67525-0317

Re: Taxation--Collection and Cancellation of
Taxes--Voluntary Transfer of Personal Property
Before Tax Paid; Collection

Synopsis: K.S.A. 1986 Supp. 79-2020 does not operate
retrospectively. Prior to the enactment of K.S.A.
1986 Supp. 79-2020, taxes assessed but not paid
prior to the transfer of property are the
responsibility of the transferor of the property
and do not follow the property to the transferee in
the form of a lien. Cited herein: K.S.A. 79-1703;
K.S.A. 1986 Supp. 79-2020; K.S.A. 79-2109; 79-2110;
79-2111.

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Dear Representative Buehler:

As Representative of the One Hundred Thirteenth District, you
request our opinion regarding K.S.A. 1986 Supp. 79-2020.
Specifically you question whether this statute may be applied
retroactively or, if not, whether the Barton County
Treasurer may abate taxes assessed but not paid prior to the
transfer of the property.

K.S.A. 1986 Supp. 79-2020 provides as follows:

"If any owner of personal property surrenders or transfers such property to another after the date such property is assessed and before the tax thereon is paid, whether by voluntary repossession or any other voluntary act in reduction or satisfaction of indebtedness, then the taxes on the personal property of such taxpayer shall fall due immediately, and a lien shall attach to the property so surrendered or transferred, and shall become due and payable immediately. Such lien shall be in preference to all other claims against such property. The county treasurer, after receiving knowledge of any such surrender or transfer, shall issue immediately a tax warrant for the collection thereof and the sheriff shall collect it as in other cases. The lien shall remain on the property and any person taking possession of the property does so subject to the lien. The one owing such tax shall be liable civilly to any person taking possession of such property for any taxes owing thereon, but the property shall be liable in the hands of the person taking possession thereof for such tax. If the property is sold in the ordinary course of retail trade it shall not be liable in the hands of the purchasers. No personal property which has been transferred in any manner after it has been assessed shall be liable for the tax in the hands of the transferee after the expiration of three years from the time such tax originally became due and payable."

The rules of statutory construction dictate that a statute will operate prospectively only unless the language of the statute clearly expresses legislative intent that it operate retrospectively [Ohio Casualty Ins. Co. v. State Farm Auto. Ins. Co., 601 F.Supp. 345 (D.Kan. (1984)); Jackson v. American Best Freight System, Inc., 238 Kan. 322, 324 (1985)], or the new provisions of the statute are purely procedural in nature and do not create a new liability or affect substantive rights. [Jackson, 238 Kan. at 324; Anderson v. Beech Aircraft, 237 Kan. 336, 339 (1985)].

The language of K.S.A. 1986 Supp. 79-2020 in no way indicates a legislative intent that it operate retrospectively. Neither is the statute purely procedural; it creates a lien on personal property for the payment of taxes which did not exist prior to its enactment. In Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co., 229 Kan. 511 (1981), the Supreme Court of Kansas held that personal property which is voluntarily surrendered in reduction or satisfaction of a debt is not subject to the provisions of K.S.A. 79-2111 because a taking upon voluntary surrender does not constitute seizure by legal process. Since taxes are not a lien upon the property against which they are assessed except as specifically authorized by statute, particularly prior to the date the taxes are due, the court held there was no lien against the property under these circumstances. K.S.A. 1986 Supp. 79-2020 was enacted four years after Robbins was decided, thus creating a new lien which previously did not exist.

The Court in Robbins also held that K.S.A. 79-2109 and 79-2110 did not apply to the facts in that case. K.S.A. 79-2109 provides that if the owner of personal property sells all of a class of the property, after assessment but before payment, to any one person, the taxes fall immediately due and become a lien on the property and are collectable from the purchaser. For this statute to apply, there must be a sale, by the owner, of all of a class of property. K.S.A. 79-2110 provides that if an individual, "after his or her personal property is assessed and before the tax thereon is paid, shall sell all of the same to any one person, and not retain sufficient to pay the taxes thereon, the tax for that year shall be a lien upon the property so sold, and shall at once become due. . . ." The court has interpreted this statute and its predecessor (R.S. 1923, 79-317) to apply only to bulk sales of personal property. Robbins, 229 Kan. at 514; Andrews v. Hunter, 122 Kan. 325 (1927); Lumber Co. v. Chandler, 90 Kan. 561 (1913). It should also be noted that the three statutes do not create liability in the hands of the purchaser/transferee if the property is sold in the ordinary course of retail trade. Further, K.S.A. 79-2110 and K.S.A. 1986 Supp. 79-2020 provide that no personal property which has been transferred after its assessment shall be liable for the tax in the hands of the transferee after the expiration of three years from the time such tax became originally due and payable.

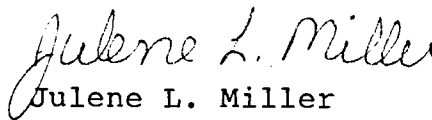
Since K.S.A. 79-2020 does not operate retrospectively, the question becomes whether the taxes assessed but not paid at

the time of transfer may be abated by the county treasurer. K.S.A. 79-1703 prohibits any release, discharge, remittance or commutation of any tax by any county official. Thus it would appear that though the tax does not follow the property in the form of a lien, it still remains an obligation of the taxpayer who transferred the property before paying the tax. The purpose of statutes like K.S.A. 1986 Supp. 79-2020, K.S.A. 79-2109 and 79-2110 is to ease the collection process, not to relieve the original owner of his obligation to pay the taxes owed. Indeed, all three of these statutes provide that the purchaser or transferee who pays the tax has a civil cause of action against the seller or transferor for the amount paid. It is therefore our opinion that if the personal property in question was transferred prior to the enactment of K.S.A. 1986 Supp. 79-2020, a lien is not created in the property and the transferee is not liable for the taxes assessed prior to the transfer. The county cannot abate the tax but must pursue the general collection procedures.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm