



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 40

William B. Elliott
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Re: Taxation--Collection and Cancellation of
Taxes--Voluntary Transfer of Personal Property
Before Tax Paid

Synopsis: By its terms, K.S.A. 1987 Supp. 79-2020 establishes a tax lien against personal property only when that property is transferred after the date it is assessed and before the tax thereon is paid. Property on which taxes are current which is transferred prior to assessment is not subject to the provisions of K.S.A. 1987 Supp. 79-2020. K.S.A. 1987 Supp. 8-173 requires only that the person applying for registration be current in the payment of his or her personal property taxes levied for the preceding year; it does not make the applicant responsible for taxes levied against another. Cited herein: K.S.A. 1987 Supp. 8-173; 79-2020; K.S.A. 79-2109; 79-2110.

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Dear Mr. Elliott:

As Graham County Attorney you request our opinion regarding the collection of delinquent personal property taxes. Specifically you ask how K.S.A. 1987 Supp. 8-173 and 79-2020 should be applied in the following situations:

"EXAMPLE 1: A owns a motor vehicle which must be registered in September of each year. In September of 1987, A registers that vehicle and pays the personal property taxes assessed thereon. Personal property taxes on other property owned by A become delinquent December 20, 1987; in January, 1988 A sells the previously tagged and registered vehicle to B. Does the K.S.A. 79-2020 lien statute allow the county to require payment of all A's personal property taxes before B is allowed to register and tag his newly purchased vehicle?"

"EXAMPLE 2: A owns a motor vehicle which must be registered in September of each year. A fails to pay his taxes, obtain a tag or register his vehicle in September and drives it without registration until January, 1988 when he sells it to B. Does the K.S.A. 79-2020 lien statute allow the county to require payment of all A's personal property taxes before B is allowed to register the vehicle?"

K.S.A. 1987 Supp. 8-173 pertains to the registration of vehicles and provides in part:

"An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated and amendments thereto, shall not be accepted unless the person making such application shall exhibit:

"(a) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year, including taxes upon such vehicle, except that if such application is made before June 21 such receipt need show payment of only one-half the preceding year's tax. . . ."

K.S.A. 1987 79-2020 creates a lien on personal property which is voluntarily transferred or surrendered after the date it is assessed but before the tax thereon is paid:

"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. . . ."

Arguably K.S.A. 1987 Supp. 79-2020 does not apply to mere sales of personal property -- the language of the statute indicates that its provisions apply only to the surrender or transfer of property "by voluntary repossession or any other voluntary act in reduction or satisfaction of indebtedness." The statute uses terms such as "transferee" and "person taking possession" rather than "purchaser," and "transfer" and "surrender" instead of "sale." (Compare K.S.A. 79-2109 and 79-2110). For purposes of this opinion, however, we will assume that K.S.A. 1987 Supp. 79-2020 does apply to a transfer of property other than by voluntary repossession or other act in reduction or satisfaction of a debt.

In your first example, taxes are current on the property being transferred and the transfer does not occur in the period of time between assessment and payment of taxes on that property. Thus, K.S.A. 1987 Supp. 79-2020 does not establish a tax lien in this case because under the statute, the transfer of the property must occur "after the date such property is assessed and before the tax thereon is paid." Further, K.S.A. 1987 Supp. 8-173 requires only that the applicant for registration be current in payment of personal property taxes. It does not make that applicant responsible for another person's delinquent taxes.

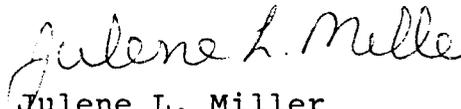
In your second example, the vehicle is transferred after being assessed but prior to the tax on that vehicle being paid. You ask whether K.S.A. 1987 Supp. 79-2020 would allow the county to require payment of all the seller's personal property taxes before the purchaser is allowed to register the vehicle. In a case construing K.S.A. 79-2109 and 79-2110, each creating liens against property transferred after assessment but before payment of taxes thereon, the Kansas Supreme Court stated:

"[T]axes are not a lien upon the property against which they are assessed except by specific statutory authority, particularly prior to the date the taxes are due. Statutes creating tax liens are strictly construed in favor of the taxpayer." Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co., 229 Kan. 511, 512 (1981). (Emphasis added.)

While arguably K.S.A. 1987 Supp. 79-2020 provides that all the seller's personal property taxes follow the property transferred in the form of a lien against that property, in our opinion this is by no means clear on the face of the statute and thus, pursuant to the rule of construction cited above, we do not believe that the purchaser becomes responsible for the payment of all the seller's personal property taxes in the situation you describe. Further, while K.S.A. 1987 Supp. 8-173 requires the registration applicant to exhibit a receipt showing that all personal property taxes levied against such person (the applicant) have been paid for the preceding year, it does not require that taxes levied against the seller be paid by the applicant/purchaser. Thus, in our opinion the county may not require that all the seller's personal property taxes be paid before allowing the purchaser/applicant to register the vehicle.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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