



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 12, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 8

John R. Luttjohann
Director of Property Valuation
Kansas Department of Revenue
Docking State Office Building
Topeka, Kansas 66612-1585

Re: Taxation--Property Exempt From Taxation--
Merchants' and Manufacturers' Inventory;
Recertifying Valuations of Public Utility Property;
Time for Collection

Synopsis: Absent a valid court or administrative order directing otherwise, 1989 taxes on personal property of public utilities imposed pursuant to 1989 House Bill No. 2004 should be collected according to the statutory scheme in 1990. Cited herein: K.S.A. 1989 Supp. 79-201m; K.S.A. 79-301; K.S.A. 1988 Supp. 79-306; K.S.A. 79-5a02; 79-5a07; K.S.A. 1988 Supp. 79-1427a; 79-1475; K.S.A. 79-1801; 79-1802; 79-1803; 79-1804; K.S.A. 1988 Supp. 79-2001; 79-2004a, as amended by L. 1989 House Bill No. 2001; 1989 House Bill No. 2004.

* * *

Dear Director Luttjohann:

You request our opinion regarding collection of taxes on public utilities' personal property pursuant to 1989 House Bill No. 2004, enacted in the Special Session of the Legislature. You question whether such taxes should be collected immediately upon recertification or, since recertification will occur after November 1, whether the taxes

do not fall due until November 1, 1990 and thus should not be collected until next year.

House Bill No. 2004 amended the statutory exemption for merchants' and manufacturers' inventory, K.S.A. 1988 Supp. 79-201m, by excluding the tangible personal property of public utilities from the exemption. The language making the enactment applicable to all taxable years commencing after December 31, 1988 was left intact, indicating a legislative intent to tax such property in 1989. We note that pending litigation may determine the validity of House Bill No. 2004 and we will therefore not discuss that issue. We presume the act's validity for purposes of this opinion.

You direct our attention to Attorney General Opinion No. 86-74 which discussed the timing for collection of taxes on personal property determined to have "escaped" taxation, K.S.A. 1988 Supp. 19-1427a, or "discovered" by the county appraiser after certification of the tax rolls to the county clerk, K.S.A. 1988 Supp. 79-1475. You note that the property in question neither escaped taxes nor was discovered by the county appraiser pursuant to these statutes, but ask whether the rationale of Opinion No. 86-75 would nevertheless apply to this situation since the values for the personal property of public utilities were not recertified to the counties until after November 1, 1989. We believe the rationale does apply.

The Kansas statutes provide a detailed time line for determining the amount of and collecting personal property taxes. Personal property subject to taxation must be listed with the county appraiser by March 1 or April 1 of each year, depending on the identity of the property owner. K.S.A. 79-301; K.S.A. 1988 Supp. 79-306. Public utilities are required to provide requisite information to the director of property valuation by March 20. K.S.A. 79-5a02. The director appraises the property of public utilities and certifies to the county clerk of each county the amount of state assessed utility valuations for each taxing district in the county. K.S.A. 79-5a07. The county clerk is then responsible for notifying the appropriate officials of each taxing district before July 1 of the values to be used in arriving at the mill levy for that district. K.S.A. 79-5a07. The governing bodies of all taxing subdivisions must determine the amount of money to be raised that year by tax and certify the same to the county clerk on or before August 25. K.S.A. 79-1801; K.S.A. 79-1802. The clerk then computes the final tax levy rate to be applied upon the amount of personal property and places these figures on the tax rolls. K.S.A. 79-1803. The rolls

are to be certified to the county treasurer on or before November 1, and all taxes are due on November 1. K.S.A. 79-1803; K.S.A. 79-1804. Tax statements are to be sent out on or before December 15, K.S.A. 1988 Supp. 79-2001, and K.S.A. 1988 Supp. 79-2004a, as amended by 1989 House Bill No. 2001, sets out the time for payment of taxes. All these procedures were accomplished before 1989 House Bill No. 2004 was enacted, and therefore the figures used did not include valuations for public utility inventories.

Prior opinions of this office and the Kansas Supreme Court discuss the importance of these time lines to ensure an orderly and timely execution of the tax scheme. Attorney General Opinion No. 81-187; Mobile Oil Corporation v. McHenry, 200 Kan. 211, 226, 238 (1968); Mobile Oil Corporation v. Medcalf, 207 Kan. 100, 104, 105, 106, 107 (1971). The legislature, in enacting the amendment to K.S.A. 1988 Supp. 79-201m, did not specify a different procedure for collecting the personal property taxes on public utilities' inventory in 1989. We therefore conclude that, for the sake of preserving the orderly scheme of taxation, the recertified values in question should be placed on the tax rolls for collection in 1990 rather than in 1989. We note that a court or administrative order may direct otherwise and any such valid order may alter the conclusion reached in this opinion.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General