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ATTORNEY GENERAL OPINION NO. 90- 56

Harland E. Priddle
Secretary
Kansas Department of Commerce
400 West 8th Street, 5th Floor
Topeka, Kansas 66603-3957

Re: Taxation--Property Exempt From Taxation--Property
Used Exclusively by the State; Filing for Exemption

Synopsis: State agencies are not exempted from the filing
requirement of K.S.A. 79-213. Initial requests for
property tax exemption for property used
exclusively by the state must be processed
according to the provisions of K.S.A. 79-213.
Cited herein: K.S.A. 79-201a; 79-210; 79-213; L.
1984, ch. 349, §1.

* * *

Dear Secretary Priddle:

You request our opinion regarding whether the department of
commerce travel and tourism division must file for a tax
exemption under K.S.A. 79-213 for personal property used in
publishing the Kansas Magazine.

K.S.A. 79-213 excepts certain types of property from its
filing provisions in subsection (1). Personal property used
by a state agency is not one of the listed exceptions to the
filing requirement. K.S.A. 79-710 specifically exempted
tangible personal property owned by the state and used for a
governmental purpose from its annual filing requirement until
it was amended in 1984 to require annual filings only for

property exempt from taxation for a specific number of years. L. 1984, ch. 349, § 2. Arguably K.S.A. 79-210, prior to the enactment of K.S.A. 79-213, exempted certain state personal property from all filing requirements. However, in enacting K.S.A. 79-213 several persons testifying on the bill stated that it was merely a codification of existing practice. See Minutes of the House Committee on Assessment and Taxation, March 3, 1990, March 7, 1990; Minutes of the Senate Committee on Assessment and Taxation, March 27, 1990, April 2 1990. The practice at that time appears to have differed from county to county, but we have been advised that some counties were in fact requiring initial filings for state personal property, the subsequent annual filings only being excepted by K.S.A. 79-210. K.S.A. 79-213 did not provide for an exception from the initial filing requirement for personal property used by the state, although subsequent amendments to that statute have excepted certain other types of exempt property from its provisions including property which, like certain state personal property, was exempted from K.S.A. 79-210 prior to its 1984 amendment.

Several authorities support the position that state agencies must file for an initial exemption for personal property. In Tri-County Public Airport Authority v. Board of Morris County Commissioners, 233 Kan. 960, 966 (1983), the Kansas Supreme Court held that political subdivisions of the state are required to follow the procedures of K.S.A. 79-213 to claim a tax exemption. Personal property of political subdivisions of the state was also excepted from the provisions of K.S.A. 79-210 at the time K.S.A. 79-213 was enacted. In Attorney General Opinion No. 87-135 this office concluded that a federal land bank, while exempt from payment of certain property taxes, is not exempt from the procedure of filing for an exemption. In an article discussing the status of Kansas tax laws in 1984, the authors stated as follows:

"In 1984 the legislature considered the mechanics of claiming property tax exemptions. Prior to 1984, Kansas Statutes Annotated sections 79-210 and 79-213 established a system that required taxpayers in most instances to file a claim of exemption and to refile the claim annually. The law did not require owners of certain exempt property including household goods, cemetery lots, and certain government property to reassert such exemption after initial approval."

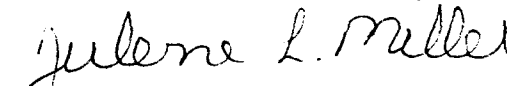
McKenzie, Ratzlaff, Survey of Kansas
Law: Taxation, 33 U.Kan.L.Rev. 69, 74
(1984) (emphasis added, footnotes
omitted).

Additionally, we believe there may be good reasons for requiring such filings by state agencies. Except for the provisions relevant to property purchased with the proceeds of industrial revenue bonds, the tax exemption for state property in K.S.A. 79-201a Second applies only to property used exclusively by the state. State property which is used by a private entity, or private property which is leased to the state is not entitled to exempt status under this section because such property is not being used exclusively by the state. Thus, in order for the local appraiser to ascertain the status of the property, a claim for exemption should be filed with and approved by the board of tax appeals pursuant to K.S.A. 79-213. In any event, if the legislature intends for state entities to be exempt from this filing requirement, it is our opinion that such an exception should be drafted into K.S.A. 79-213(1) along with the other exceptions currently listed therein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General