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August 23, 1990

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ATTORNEY GENERAL OPINION NO. 90-100

The Honorable Michael R. O'Neal
State Representative, One Hundred Fourth District
P.O. Box 2977
Hutchinson, Kansas 67504

The Honorable Arthur Douville
State Representative, Twentieth District
9600 Woodson
Overland Park, Kansas 66207-2844

The Honorable Eugene P. Amos
State Representative, Eighteenth District
5925 Bluejacket
Shawnee, Kansas 66203

The Honorable Nancy J. Brown
State Representative, Twenty-Seventh District
15429 Overbrook Lane
Stanely, Kansas 66224

Re: Taxation--Motor Vehicles--Taxes Levied Annually for
Registration Period; Due Date

Synopsis: The current practice under K.S.A. 79-5101 et
seq. and K.A.R. 92-51-21 of taxing motor vehicles
in such a way as to cause taxpayers with surnames
at the end of the alphabet to pay more in taxes
than identically situated taxpayers with surnames
at the beginning of the alphabet is violative of
the equal protection clause of the United States
Constitution. Cited herein: K.S.A. 1989 Supp.
8-134; K.S.A. 79-5103; 79-5104; 79-5105; 79-5107,
as amended by L. 1990, ch. 34, § 5; K.A.R.
92-51-21; U.S. Const., Amend. XIV.

* * *

Dear Representatives O'Neal, Douville, Amos and Brown:

You have each requested our opinion regarding the constitutionality of K.S.A. 79-5101 et seq., the motor vehicle tax act. Specifically you question whether the staggered registration and taxation system violates the equal protection clause of the fourteenth amendment to the United States Constitution.

K.S.A. 79-5103(a) requires the department of revenue to annually adopt a schedule for determining the value of motor vehicles as of the time they are first offered for sale as new motor vehicles. The schedule is to be formulated using the trade-in value for each particular make and model as developed from nationally recognized publications. Based on the value so determined, each motor vehicle is to be classified in accordance with K.S.A. 79-5104. Then, pursuant to K.S.A. 79-5105, the tax on each motor vehicle is to be computed as follows:

"[B]y (a) determining the amount representing the midpoint of the values included within the class in which such motor vehicle is classified under K.S.A. 79-5102 or 79-5103, and amendments thereto, except that the midpoint of class 20 shall be \$21,000 plus \$2,000 for each \$2,000 or portion thereof by which the trade-in value of the vehicle exceeds \$22,000, and, if the model year of the motor vehicle is a year other than the year for which the tax is levied, by reducing such midpoint amount by an amount equal to 16% of: (1) The remaining balance for each year of difference between the model year of the motor vehicle and the year for which the tax is levied if the model year of the motor vehicle is 1981 or a later year or (2) the remaining balance for each year of difference between the year 1980 and the year for which the tax is levied if the model year of the motor vehicle is 1980 or any year prior thereto;

"(b) multiply the amount determined under (a) by 30% (which shall constitute the taxable value of the motor vehicle); and

"(c) multiply the taxable value of the motor vehicle produced under (b) above by the county average tax rate for the next preceding tax year."

The tax is then levied annually for the individual taxpayer's registration period as set forth in K.S.A. 8-134(c) and K.A.R. 92-51-21. In other words, the tax year for any particular taxpayer is that taxpayer's registration period. See K.S.A. 79-5107, as amended by L. 1990, ch. 34, § 5. Pursuant to K.A.R. 92-51-21, the registration periods are staggered according to the first letter of the vehicle owner's surname. Taxpayers with surnames beginning with A register for the period beginning with the last day of February through the last day of the following February. Taxpayers with surnames beginning with Z register for the period beginning with the last day of December through the following December.

An example of how this scheme works was provided by the legislative research department via Representative O'Neal.

"In our example, we will assume that two taxpayers with surnames beginning with 'A' and 'T', respectively, purchased identical motor vehicles valued at \$15,000 each with a model year of 1989 in June, 1989 and registered those vehicles on July 1, 1989. Further assume for the sake of simplicity that neither taxpayer previously had a vehicle, so no credit for prior taxes paid is due.

"The countywide average mill levy would be applied to 30 percent of the trade-in value when new, or \$4,500 for both vehicles. Assuming that the countywide average mill levy is 120, the annual liability on each vehicle would be \$540. Since the expiration date for A's registration is the end of February, he would owe 8 months' liability, or \$360. When A renews in February of the new year, the tax would be based on the midpoint of the value class, depreciated 16 percent;

thus, the taxable value of the vehicle would be \$12,600. Assuming the countywide average mill levy did not change, the 120 mills then would be applied to \$3,780 ($\$12,600 \times 30$ percent), and he would owe \$453.60 to register the vehicle for the new full year.

"Taxpayer T, on the other hand, would owe 5 months' liability on the initial registration, since his registration normally expires at the end of November. So to register his vehicle from July 1 through November 30 T would incur a liability of \$225 (5/12ths of \$540). At time for T's renewal, however, the 16 percent depreciation would not have started, since the model year is the same as the registration year. T would therefore owe the full \$540 to renew his registration for the new full year, and would pay a total of \$765 in calendar year 1989.

"Extending this analysis for another year, the renewal cost for both A and T would be \$453.60 in 1990, and \$381.02 in 1991.

"Continuing the constant mill levy assumption and annual depreciation, the enclosed Table 1 [attached] shows that if both A and T disposed of the vehicles on December 31, 1994, collecting their respective amounts of refunds due, T would have paid \$236 more in motor vehicle taxes after owning the vehicles for five and one-half years.

"If one assumes that the vehicles had a 1990 model year, an identical analysis reveals a difference of \$203 more in taxes paid by T (see Table 2) [attached]."

Clearly taxpayer T has been treated differently than taxpayer A. However, "the equal protection clause does not forbid discrimination with respect to things [or people] that are different." 16A Am.Jur.2d Constitutional Law § 738 (1979).

"The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals differently from the others. . . . Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classification and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359, 35 L.Ed.2d 351, 354, 355, 93 S.Ct. 1001 (1973) (footnotes omitted).

"But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'" Allied Stores of Ohio v. Bowers, 358 U.S. 522, 527, 3 L.Ed.2d 480, 485, 79 S.Ct. 437 (1959) (emphasis added; citations omitted).

See also State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 425 (1981) ("The state taxation scheme must have a rational basis with classifications based on differences having a fair and substantial relation to the object of the legislation"); Henry v. Bauder, 213 Kan. 751, 753 (1974) ("There must be some difference in character, condition, or situation, to justify distinction, and this difference must bear a just and proper relation to the proposed classification and regulation; otherwise the classification is forced and unreal, and greater burdens are, in fact, imposed on some than on others of the same desert"); 16A Am.Jur.2d Constitutional Law §§ 752, 754, 755 (1979).

The classification in question is based on the first letter of a taxpayer's surname. The reported objectives for the legislation corresponding payment of motor vehicle taxes to vehicle registration were to ease administration and reduce delinquencies. Reports of Special Committees to the 1975

Kansas Legislature, Proposal No. 88 (1974). Presumably the purpose for staggering registration alphabetically was to ease administration as well. Staggering dates when taxes are due based on surnames, by itself, is of little or no constitutional consequence. However, while not facially invalid, the effect of doing so renders the classification unconstitutional. We find absolutely no difference between taxpayers with surnames beginning with A and those beginning with T which have a fair and substantial relation to the objects of the legislation. There is no difference in character, condition or situation to justify distinction between the two groups. Thus we do not believe the discriminatory treatment can be supported. Certainly there is no reason for taxing persons with surnames at the end of the alphabet at a higher rate than persons with surnames at the beginning of the alphabet. State ex rel. Stephan v. Smith, 242 Kan. 336, 373 (1987) ("Assisting the indigent is a legitimate public goal, but cannot be accomplished at the expense of a particular group of people"). This is particularly so when the stated objectives of the legislation can be met without imposing this discriminatory treatment. 16A Am.Jur.2d Constitutional Law § 756 (1979). A bill was introduced in the 1990 legislative session to correct the inequity (1990 House Bill No. 2852), but was rejected due to a fiscal note estimating a \$21-23 million annual reduction in revenues to local units of government. We believe there are other methods to minimize the inequity, some of which may not significantly reduce revenues. In any event, we do not believe potential loss of revenue is sufficient to sustain the current inequity. It is therefore our opinion that the current scheme for taxing motor vehicles violates the equal protection clause of the fourteenth amendment.

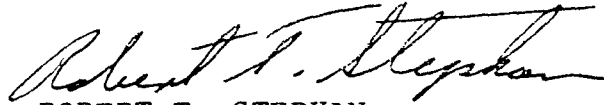
For similar reasons we believe the scheme also violates section 1 of the Bill of Rights of the Kansas Constitution. Henry v. Bauder, 213 Kan. at 752, 753; State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. at 426. See also Farley V. Engelken, 241 Kan. 663, 671 (1987) ("the Kansas Constitution affords separate, adequate, and greater rights than the Federal Constitution").

In conclusion, the current practice under K.S.A. 79-5101 et seq. and K.A.R. 92-51-21 of taxing motor vehicles in such a way as to cause taxpayers with surnames at the end of the alphabet to pay more in taxes than identically situated

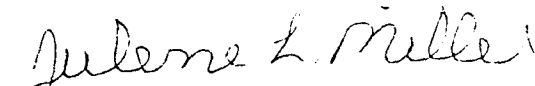
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Eugene P. Amos, Nancy J. Brown
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taxpayers with surnames at the beginning of the alphabet is
violative of the equal protection clause of the United States
Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm