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ATTORNEY GENERAL OPINION NO. 90- 115

Mr. Ed C. Rolfs, Secretary
Kansas Department of Revenue
Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1588

Re: Taxation--Motor Vehicles--Computation of Tax; Mill
Levy Rates

Synopsis: The secretary of revenue has no authority to
accelerate the implementation of the mill levy
rates used in the formula for determining motor
vehicle taxes. Cited herein: K.S.A. 1989 Supp.
8-134; K.S.A. 79-5102; 79-5103; 79-5105; 79-5106;
79-5107, as amended by L. 1990, ch. 34, § 5;
79-5115; K.A.R. 92-51-21; 92-55-2a.

* * *

Dear Secretary Rolfs:

You request our opinion regarding your authority to alter the
implementation date of a new mill levy under K.S.A. 79-5105
absent statutory amendment. As we understand it, certain
county representatives are asking that you prorate the mill
levy rates of the two years next preceding the two calendar
years over which a registration spans, much like you prorated
the depreciation pursuant to K.A.R. 92-55-2a.

We note initially the rules attendant to promulgation of rules
and regulations by administrative agencies such as the
department of revenue:

"Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes, therefore any exercise of authority claimed by the agency must come from within the statute. There is no general or common law power that can be exercised by an administrative agency.

"Rules or regulations of an administrative agency, to be valid, must be within the statutory authority conferred upon the agency. Those rules or regulations that go beyond the authority authorized, which violate the statute, or are inconsistent with the statutory power of the agency have been found void. Administrative rules and regulations to be valid must be appropriate, reasonable and not inconsistent with the law." Pork Motel, Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374, 378-379 (1983).

K.S.A. 79-5115 directs the secretary of revenue "to adopt such rules and regulations as are necessary to administer and carry out the provisions of [the motor vehicle tax] act." Recently, the Kansas court of appeals reviewed similar language in the insurance statutes being proffered as authority for an insurance commission regulation. The court determined that "the statute expressly provides, however, only the power to make regulations necessary to enforce the laws relating to supervision of insurance, i.e., some other statute must first provide more specific basis for authority before this statute comes into play." Durrett v. United Services Automobile Association, _____ Kan.App.2d _____, case no. 64,604 (Sept. 28, 1990). Thus, we must look to the statute which would arguably be administered or carried out by the proposed regulation to determine the agency's authority to adopt it.

K.S.A. 79-5105 is the statute which sets forth the formula for determining the motor vehicle tax. This is the only statute which refers to the mill levy to be used in figuring the tax. K.S.A. 79-5105 provides in part:

"The amount of such tax on a motor vehicle shall be computed by. . . .

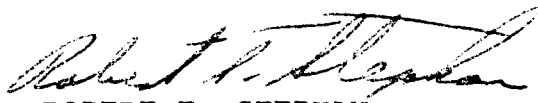
"(c) multiply[ing] the taxable value of the motor vehicle produced under (b) above by the county average tax rate (mill levy) for the next preceding tax year."

(Emphasis added).

Motor vehicle taxes are calculated and imposed at the time of registration. K.S.A. 79-5106; 79-5107, as amended by L. 1990, ch. 34, § 5. The "tax year" for purposes of motor vehicle taxation is the individual's registration year. K.S.A. 79-5106; 79-5107, as amended. The registration year of an individual is determined pursuant to K.S.A. 1989 Supp. 8-134 and K.A.R. 92-51-21. All registration years span a part of two calendar years. However, the term "tax year" as used in K.S.A. 79-5105(c) refers to the tax year for assessment of real and personal property taxes under K.S.A. 79-101 et seq., which is the calendar year. Thus, while a taxpayer pays for a registration year which spans a part of two calendar years, the mill levy figure required by statute is from one specific calendar year; the year next preceding the date of registration. We do not believe it would be reasonable, and indeed would be in conflict with K.S.A. 79-5105, for the department of revenue to interpret this provision otherwise, i.e. to use two different calendar years' mill levy rates, and thus it is our opinion that the secretary has no authority to implement the requested change. (We note that the authority for promulgation of K.A.R. 92-55-2a differs in two significant respects: (1) the secretary has specific authority to determine the value of motor vehicles for purposes of the act, K.S.A. 79-5102, 79-5103, and depreciating the vehicle goes to its value; (2) K.S.A. 79-5105(a) specifically allows adjustment for depreciation when the model year of the motor vehicle is a year other than that for which the vehicle is being taxed. As noted above, the vehicle is taxed for parts of two different years, so depreciation can and should be prorated pursuant to this statute.)

In conclusion, the secretary of revenue has no authority to accelerate the implementation of the mill levy rates used in the formula for determining motor vehicle taxes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General