



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92-129

Steven W. Hirsch  
Decatur County Attorney  
P.O. Box 296  
Oberlin, Kansas 67749

Re: Taxation--Motor Vehicles--Collection of Past Due or Underpaid Motor Vehicles Taxes; Duties of County Treasurer and Sheriff; Judgment Liens; Effect of Failure to Send Notice

Synopsis: Failure of the county treasurer to follow the procedures in K.S.A. 79-5116 does not excuse payment of interest on delinquent motor vehicle taxes. Cited herein: K.S.A. 8-127; 8-129; 8-134; K.S.A. 1991 Supp. 79-5101; K.S.A. 79-5102; 79-5106; K.S.A. 1991 Supp. 79-5107; K.S.A. 79-5114, as amended by L. 1992, ch. 319, § 9; 79-5116; K.A.R. 92-51-21.

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Dear Mr. Hirsch:

You request our opinion regarding interest charges under the motor vehicle tax act. K.S.A. 79-5116 sets forth procedures to be followed by the county when motor vehicles taxes are not timely paid: the county treasurer is to send a notice to the taxpayer indicating the amount of the tax and that interest will be charged pursuant to K.S.A. 79-5114, as amended by L. 1992, ch. 319, § 9; if the taxes remain unpaid 30 days after mailing the notice, the treasurer is to issue a warrant directing the sheriff to levy the amount of taxes, interest and sheriff's fees on any personal property of the taxpayer;

if the taxes remain uncollected, the treasurer is to file with the clerk of the district court an abstract of the taxes, interest, costs and penalties which is to be entered in the appearance docket and become a judgment and a lien on real estate pursuant to the code of civil procedure. You question whether interest can be charged if the foregoing procedures are not followed by the county.

K.S.A. 79-5102 provides that motor vehicles, as defined in K.S.A. 1991 Supp. 79-5101, are to be valued and taxed pursuant to the motor vehicle tax act, K.S.A. 79-5101 et seq., and are not subject to other property or ad valorem taxes. Motor vehicle taxes are due and payable according to the schedule for registration of motor vehicles. K.S.A. 79-5102; 79-5106; K.S.A. 1991 Supp. 79-5107. The vehicle owner is responsible for making application for registration according to the provisions of K.S.A. 8-127, 8-129, 8-134(c) and K.A.R. 92-51-21. (We presume you are concerned primarily with registration and taxation of passenger vehicles). While the department of revenue is to furnish application forms, we find nothing which excuses failure to register or pay taxes merely because the application form is not mailed to the vehicle owner.

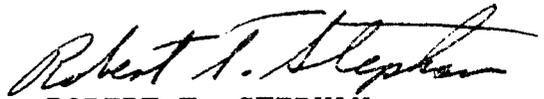
K.S.A. 79-5114, as amended by L. 1992, ch. 319, § 9 provides as follows:

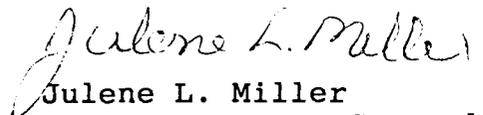
"All taxes levied upon motor vehicles under the provisions of this act which remain due and unpaid after the date prescribed for the payment thereof shall be subject to interest per annum at the rate prescribed by ~~K.S.A. 79-2968(b)~~ K.S.A. 79-2004a, and amendments thereto, of the tax remaining due and unpaid from the date the same became due to the date of payment and such interest shall be credited to the county general fund and retained by the county." (Underscoring and strike type reflect amendments which are to take effect Jan. 1, 1993.)

Thus, interest begins to accrue from the date the taxes became due. The county treasurer is to send a notice to this effect pursuant to K.S.A. 79-5116. However, that statute further states: "Failure to receive any such notice shall not relieve such owner defaulting in payment of motor vehicle taxes from any interest and costs attached thereto." Language very

similar to this was scrutinized by the Kansas Supreme Court in Spalding v. Price, 210 Kan. 337, 339 (1972), and the duty to mail notice was held to be directory rather than mandatory. We therefore believe the court would find that interest on delinquent motor vehicle taxes is not excused due to the county treasurer's failure to proceed according to K.S.A. 79-5116.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm