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


* * *

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