



STATE OF KANSAS

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Attorney General

August 11 , 1975

ATTORNEY GENERAL OPINION NO. 75-317

Wilma Williams  
Doniphan County Clerk  
Doniphan County Courthouse  
Troy, Kansas 66087

Re: Continuance of tax lien on personal property  
when sold "in the ordinary course of retail  
trade". K.S.A. 79-2109, 79-2110.

Synopsis: A tax lien on personal property terminates when  
that property is sold to a merchant and that mer-  
chant in turn resells at retail that property.  
The purchaser from such a merchant holds such  
personal property clear of any tax lien.

Dear County Clerk:

You ask if there is a conflict between these two  
above statutes, and a definition of the words "in the ordinary  
course of retail trade" used in both of them.

In our opinion there is no conflict between the two  
statutes.

K.S.A. 79-2110 is the older statute, dating back to  
1899. It applies to any sale of personal property. It applies  
to an "isolated sale", such as a mobile home, or a combine.

In 1943 K.S.A. 79-2009 was enacted. It applies solely  
to the sale of "all of a class" of personal property. This  
occurs when all of the "stock in trade" of a business is sold,  
such as a grocery store, a farm machinery agency, or a used car  
lot. Such bulk sales needed a statute of its own, and in 1943  
the legislature did so, adding that if the buyer of such business  
stock would continue that business and sell the stock at retail,  
a customer buying a portion of the stock at retail could rely  
that a tax lien was not following the retail sale. The assessor  
could seize stock in trade while in the hands of the merchant, and

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the merchant could then sue the seller, but the buyer at retail was protected.

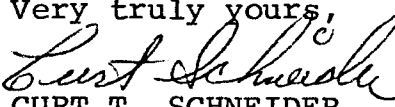
This same identical philosophy is contained in K.S.A. 79-2109. A tax lien on personal property follows that property sale after sale as between individuals. But if the property is sold to a merchant and that merchant then resells the property "in the ordinary course of retail trade", then the retail purchaser takes free of any tax lien. The theory of the law has been constant in both statutes - that a sale at retail cuts off an ad valorem tax lien.

K.S.A. 1974 Supp. 79-3602(d) defines "Retailer". It says "Retailer means a person regularly engaged in the business of selling tangible personal property . . . ." K.S.A. 1974 Supp. 79-1001 defines a merchant as "every person, company or corporation, who shall own or hold, subject to his control, any personal property within this state, which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being sold."

There appears a constant legislative intent to preserve the ad valorem tax lien on personal property through all transactions, in the sale of personal property, singly or in bulk, as between bargaining persons, companies or corporations, but the lien is cut off when the last sale is by a retailer or merchant to a consumer who buys in the "ordinary course of retail trade." It is a legislative policy to protect the buying public.

Perhaps an example would better suffice. An individual owns a mobile home. He sells it to another individual, and a third person then buys it. Then it is sold to a retailer running a "used mobile home" sales lot. The assessor can seize the mobile home owing delinquent taxes, even in the hands of the sales lot owner, but she cannot seize it after the sales lot owner has sold it at retail. Even the right of the assessor to go against the previous buyers is limited to three years.

Another example, showing a bulk sale, is for a "mobile home sales lot", containing several vehicles, to be sold to another mobile home retailer, and there are delinquent taxes at the time. The assessor can seize the mobile homes in the possession of the buying retailer, but once that retailer has sold in the regular course of business some of such mobile homes to the buying public, then the tax lien has been eliminated as to such retail sales.

Very truly yours,  
  
CURT T. SCHNEIDER  
ATTORNEY GENERAL

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