



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 3, 1976

ATTORNEY GENERAL OPINION NO. 76- 86

Gene M. Olander, District Attorney
Suite 302, Shawnee County Courthouse
Topeka, Kansas 66603

RE: KSA 79-301, 79-309, 79-316, 79-319; KSA 1975 Supp.
79-306c.

Synopsis: The tax rolls must be preserved because budgets and levies subsequently adopted depend upon them. When personal property is placed on the tax rolls and then removed from the state during the year, without leaving sufficient property remaining within the state to pay the taxes due, warrants for collection should immediately issue. Kansas may collect its taxes properly due, even though the owner, by taking property into another state, subjects it to a second tax.

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Dear District Attorney Olander:

Your assistant in charge of the Consumer Affairs Division presents a situation where a person bought permanent car tags in June, 1975 in Shawnee County, Kansas, giving a Kansas address. The car was titled in a minor and her father's name in Kansas, showing his Topeka, Kansas address. No effort appears to have been made to get a temporary or transient 15 day permit, authorized by KSA 8-135 or 8-143. The car was driven to Virginia where it was again registered on August 1, 1975 and taxes were paid to Virginia for August thru December, 1975.

On November 1, 1975 the Shawnee County Treasurer mailed a tax notice for \$81.05 for the period of June thru December, 1975.

You ask: a) Is the current Shawnee assessment tantamount to double taxation?

b) How does the pro-ration under KSA 1975 Supp. 79-306c work where a car is taken out of the state?

c) Does KSA 79-319 govern the tax assessed against a motor vehicle withdrawn from Kansas within the calendar year and re-registered outside the state?

The Shawnee County Assessment is not "double taxation". Kansas has not taxed this same car twice. The owner, by driving the car out of the state and registering it in another state incurred a second taxation in the same year by another state. Taxation of the same property in the same year by two different states is constitutional. Ray v. Board of County Comm's., 173 Kan. 859, 864, 865, 252 P2d 899. (1953); Dicarolo Masonry Cp. v. Higgins, 178 Kan. 222, 227, 284 P2d 523 (1955).

The basic scheme of taxation of personal property can be seen plainly if 79-301, 79-306c, 79-309, 79-316 and 79-319 are all read together. There appears a definite plan for taxation of all personal property. On January 1, the tax rolls are made up. KSA 79-301. All personal property must be listed, valued and assessed. Any subsequent sale or transfer will not affect such listing. 79-309. If property is brought in from out of state after January 1, and before July 1, it shall be listed, unless the owner can prove his property was listed and assessed in another state, and if so it shall be exempt for that year. 79-316. If the owner attempts to take his personal property out of the state without leaving sufficient property in Kansas to pay taxes, a warrant for the forthwith collection of taxes shall be issued. 79-319.

If local officials would permit the tax lists to erode or diminish, then, come November 1, budgets made on the basis of such lists would be underfunded because the levies would not raise the expected tax.

So, the Kansas legislature have made stringent laws to protect these tax rolls.

Automobiles are a special taxation problem in that the sales and transfer of them are so numerous, and the moving of the vehicles from one taxing district to another after such transfer, that the Kansas legislature enacted 79-306c, which gave Kansans a method of paying for that portion of the year they owned a car under a proration formula, each subsequent owner assuming the remaining months of the year. This statute contemplates a Kansas buyer or proratee. There can be no proration under this law unless there is a buyer who will assume the burden of paying the taxes for the remaining months.

Gene M. Olander, District Attorney
March 3, 1976
Page 3

That is why, when a Kansas car was taken to Virginia, no proration is possible, since there is no one to assume the balance of the tax year from August 1 to December 31, 1975. The fact that the father transferred all title to his minor daughter after she became of age in Virginia, does not change his assessment. He can do nothing to divest himself of this assessment, except to find a purchaser who would accept the proration for the balance of the year.

There was a time when many states had the reciprocity statute like KSA 79-316. Many still do. But there is move toward making people pay a whole year tax whenever license tags are bought. Virginia has done this. Both the Kansas 1975 and the 1976 sessions have considered a similar move, but it has not yet passed. But this law would not solve the situation here. Kansas would simply have collected the whole tax in June, 1975 when the Kansas tags were purchased.

We suggest this taxpayer, who had to buy tags in Virginia and pay taxes on August 1, 1975 on the same car that had received tags in Kansas in June, 1975 and was assessed then for Kansas tax, show the Virginia authorities the Kansas assessment and tax due from June, 1975, and then ask the Virginia authorities if they have a reciprocity statute like KSA 79-316.

If they do not, then Virginia is the state which has assessed and collected a second tax. If Virginia does have a reciprocity statute like Kansas, then the taxpayer should make application for a refund on this second tax.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL

CTS:CJM:gw

cc: George Schnellbacher, County Assessor
Department of Revenue; Property Valuation
Division