



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

October 26, 1977

ATTORNEY GENERAL OPINION NO. 77-345.

Gary F. Nafziger
Jefferson County Attorney
Jefferson County Courthouse
Oskaloosa, Kansas 66066

RE: Taxation - Personal Property - Proration on Sale of Automobiles - In rem proceedings against subsequent purchases; K.S.A. 79-2110, K.S.A. 1976 Supp. 79-306c, 79-2101.

SYNOPSIS: Personal property taxes on automobiles cannot be evaded by the transfer of title prior to September 1, with the old owner defaulting paying taxes for the first portion of the year and the new owner paying tax on the prorated last portion of the year. The collection of personal property tax is by statute an in rem proceeding. The automobile itself can be levied upon execution, unless the purchaser pays all delinquent taxes, penalties, interest and charges. The seller is civilly liable to such purchaser for such delinquent taxes if the purchaser has to pay them. But the automobile must be attached and sold under the statute within three years from the time the taxes became due and payable.

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Dear Mr. Nafziger:

You present a situation where a taxpayer owned a car in Jefferson County on January 1, 1976. He transferred title to this car to a Trust in August, 1976, and the County Treasurer prorated the January 1 assessment of the car between the taxpayer and Trust. The taxpayer is now in default for his portion of the 1976 tax on the car.

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In September, 1977, the taxpayer's wife brings in title to another car and wants registration to a second Trust. The County Treasurer asks if it would be proper to refuse registration of this second car until taxes are paid on the first car for 1976?

In our opinion delinquent personal property taxes on automobiles must be collected in the methods provided by statute. Bd. of Co. Comm. v. Matlock, 192 Kan. 272, 387 P.2d 211 (1963) No method of tax collection exists apart from statute.

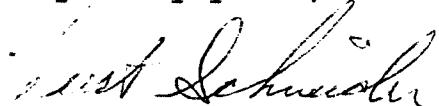
It is true that K.S.A. 8-173 prohibits a county treasurer from issuing tags unless the person making application produces proof by receipt of payment of all personal property taxes "levied against such person for the preceding year.". But this is not the case here. The delinquent taxpayer's wife makes application to register a car in the name of a Trust. Delinquent taxes on another car, owed by the applicant's husband, cannot be collected in this manner.

K.S.A. 79-2110 provides the method of collecting taxes where an automobile is sold. The delinquent taxpayer is civilly liable to his buyer or transferee, and the automobile is liable for the taxes in the hands of the taker or takers, no matter how many times title to the car is transferred, so long as the collection is made at least within three years after the taxes became due and payable.

K.S.A. 1976 Supp. 79-2101 provides the process whereby taxes unpaid on personal property shall be collected. K.S.A. 79-309 and K.S.A. 79-319 are other statutes which clearly show a legislative plan to make taxes a lien on personal property, after being assessed as of January 1. K.S.A. 1976 Supp. 79-306c, the proration statute for taxes on automobiles, repeals none of these laws.

It is our opinion, upon the facts submitted, that the County Treasurer register and issue tags on the second car to the new trust, and issue a tax warrant to the sheriff to collect the taxes on first car, even in the hands of the first trust.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw