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ATTORNEY GENERAL OPINION NO. 80- 44

Hartzell J. Whyte
Associate County Counselor
Suite 228, One Gateway Center Building
Kansas City, Kansas 66101

Re: Taxation--Listing and Valuation of Real Estate--Lands or Improvements Omitted from Rolls--Duty of Clerks

Synopsis: K.S.A. 79-417 and 79-418, which relate to assessment and collection of "escaped" or "omitted" taxes, do not prescribe any special or specific date upon which such taxes, placed upon the tax rolls, begin to draw interest. In the absence of such a provision, the only interest which may be charged upon "escaped" or "omitted" taxes is that which is applicable to all past due taxes for the subject year.

* * *

Dear Mr. Whyte:

You request our opinion as to the date upon which "escaped" ad valorem taxes on real estate begin to draw interest under the provisions of K.S.A. 79-417 and 79-418.

K.S.A. 79-417 requires county clerks to place upon the tax rolls in any year all lands and improvements which were not assessed for taxation or which escaped taxation in any former year, and

> "to charge against said lands or improvements taxes equal to and in accordance with the tax levies that would have been

> charged against said lands or improvements had they properly been listed and assessed at the time they should have been assessed under the provisions of the general laws governing the assessment and taxation of land."

The statute further excludes from any such assessment lands which have "changed ownership other than by will, inheritance or gift."

K.S.A. 79-418 provides that:

> "All taxes charged up under the provisions of K.S.A. 79-417 shall be exempt from any back penalties or interest, and shall be collected in the same manner as other taxes levied upon real estate." (Emphasis added.)

As was stated in Nickelson v. Board of County Commissioners, 209 Kan. 53, 57 (1972), K.S.A. 79-418 must be viewed "as permitting any escaped or omitted tax, levy or assessment to be added to the tax rolls against the property to which it originally should have been charged, except where the property has in the meantime changed hands other than by means of gift, will or inheritance." However, the court in Nickelson does not address the question of when such "escaped" or "omitted" taxes begin to draw interest.

K.S.A. 79-418 makes it clear that taxes assessed under K.S.A. 79-417 are exempt from "any back penalties or interest," and, as the underscored portion (above) indicates, requires that "escaped" taxes placed upon the tax rolls for any given year be "collected" in the same manner as other taxes levied upon real estate. The collection procedures for unpaid taxes upon real estate are set forth in Articles 23 and 28 of Chapter 79 of Kansas Statutes Annotated, but such collection statutes do not establish a date upon which "escaped taxes" begin to draw interest. On the contrary, one of the purposes of the "collection" process is to judicially determine what taxes and interest have been legally assessed and charged on the real estate. See K.S.A. 79-2803.

It is, therefore, clear that neither K.S.A. 79-417 or K.S.A. 79-418 provide, in any manner, for a special or specific date upon which "escaped taxes," placed upon the tax rolls, begin to draw interest. However, despite this fact, we are advised that it is the practice in several counties in this state, to begin charging interest on such escaped taxes either ten or thirty days after they are placed upon the tax rolls. Although such a practice may have much to commend it, the same has not been authorized by the legislature, and is not permissible under well-established rules applicable to the field of taxation.

In this state, the whole matter of taxation, including the levy and collection of taxes, is statutory and does not exist apart from statute. Sarver v. Sarver Oil Co., 141 Kan. 246, 248 (1935); Sherman County Comm'rs v. Alden, 158 Kan. 487, 492 (1944); Phillips Petroleum Co. v. Moore, 179 Kan. 482, 490 (1956); Board of County Commissioners v. Matlock, 192 Kan. 272, 273 (1963). An exception to this rule is that, where a statute imposes a tax but is silent as to the method of collection, such tax may be collected in the same manner as is any debt, and interest may be awarded at the "legal rate" from the date of assessment. Equitable Life Assurance Society v. Hobbs, 155 Kan. 534, 439 (1942).

Such exception is not applicable here, however, because K.S.A. 79-418 specifically provides that "escaped taxes" are to be "collected in the same manner as other taxes levied upon real estate." Given this fact, it is our opinion that the only interest which may be charged upon "escaped taxes" is that which is applicable to all past due taxes of the subject year, i.e., 12% per annum after December 20 for the first half of said taxes and 12% per annum after June 20 of the following year for the second half of said taxes. See K.S.A. 1979 Supp. 79-2004.

Very truly yours,

Robert T. Stephan

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RTS:BJS:TRH:jm