



STATE OF KANSAS

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October 16, 1980

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ATTORNEY GENERAL OPINION NO. 80-231

The Honorable Neal D. Whitaker
Representative, Ninety-First District
Chairman, Special Committee on Federal
and State Affairs
2568 Cardinal Drive
Wichita, Kansas 67204

Re: Statutes--Statutory Construction--Effect of Repeal
of Tax Statute

Synopsis: If a tax is levied under the authority of a statute
and the tax has become due, the subsequent repeal of
the statute does not preclude collection of the law-
fully imposed tax. Cited herein: K.S.A. 77-201, Second.

* * *

Dear Representative Whitaker:

As chairman of the Special Committee on Federal and State Affairs,
you seek an opinion on the following inquiry: "If a statute
authorizing a tax levy is repealed after the levy of the tax,
but before the full tax is collected, does the taxing unit have
authority to continue collecting the previous levy?"

K.S.A. 77-201, First, in relevant part, provides:

"The repeal of a statute does not . . .
affect . . . any duty imposed . . . under
or by virtue of the statute repealed."

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It was established long ago that the above-quoted provision is applicable to the repeal of a statute by which a tax is imposed or which concerns a matter of taxation. See: Chicago, R.I. & P. Rly. Co. v. Paul, 139 Kan. 795 (1934); In re Moseley's Estate, 100 Kan. 495 (1917); The State, ex rel., Caster v. Railway Co., 99 Kan. 831 (1917); and Pounds v. Rodgers, 52 Kan. 558 (1894).

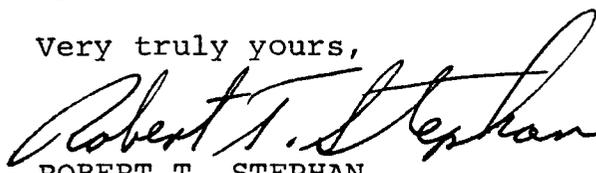
The first syllabus paragraph of In re Moseley's Estate, supra, states:

"The repeal of the inheritance tax act of 1909 (Laws 1909, ch. 248; Gen. Stat. 1909, §§9265-9291) by chapter 330 of the Laws of 1913 did not relieve the executor of an estate nor the probate court of any unperformed duties imposed upon them by the act."

One of the executor's duties was to pay the tax owed the state under the provisions of the repealed statute, and the executor was required to pay the tax. The same result was obtained in The State, ex rel., Caster v. Railway Co., supra, which also involved the repeal of the inheritance tax act of 1909.

Thus, we are of the opinion that, if a tax is levied under the authority of a statute and the tax becomes due, the subsequent repeal of the statute does not preclude or in any wise affect collection of the lawfully imposed tax.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:RJB:jm