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ATTORNEY GENERAL OPINION NO. 81-36

Honorable Neil H. Arasmith
Senator, Thirty-Sixth District
Room 128-S, State Capitol
Topeka, Kansas 66612

Re: Taxation--Income Tax--Use of Optional Tax Tables

Synopsis: A person who claims a tax credit for federal income tax purposes different than the credits specifically mentioned in paragraph (i) of subsection (c) of K.S.A. 1980 Supp. 79-32,120, may not use an optional tax table devised by the Secretary of Revenue under the provisions of K.S.A. 1980 Supp. 79-32,112a; instead, such person must use the tax computation schedule. Cited herein: K.S.A. 1980 Supp. 79-32,112a, 79-32,120.

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Dear Senator Arasmith:

Because of an inquiry from one of your constituents, you seek our opinion as to whether a person who claims a tax credit for federal income tax purposes different than the credits specifically mentioned in paragraph (i) of subsection (c) of K.S.A. 1980 Supp. 79-32,120, may use one of the optional tax tables devised by the Secretary of Revenue under the provisions of K.S.A. 1980 Supp. 79-32,112a to determine the amount of income tax owed by such person to the State of Kansas, or whether such person must use the tax computation schedule.

A person as described above must use the tax computation schedule, for the simple reason that none of the optional tax tables applies to him or her. Such a person is in the same situation as a person who has ten or more exemptions, or Kansas adjusted gross income in excess of the maximum amount provided for in the optional tax

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tables. In the case of each of the above described taxpayers, the Secretary of Revenue has not promulgated optional tax tables for their use.

The fact the Secretary of Revenue has not devised a table for such taxpayers comports with the provisions of subsection (a) of K.S.A. 1980 Supp. 79-32,112a, which are:

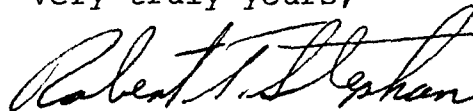
"The secretary of revenue is hereby authorized to promulgate tax tables for use by resident individuals or resident husbands and wives filing joint Kansas returns in computing Kansas income tax liability. Said tables may be limited to classes of taxpayers upon the basis of the particular federal income tax return filed by said taxpayers or any other standard determined applicable by the secretary of revenue." (Emphasis added.)

We also note the legislature was aware that optional tax tables promulgated by the secretary pursuant to K.S.A. 1980 Supp. 79-32,112a, would not be available for use by all Kansas taxpayers. (See Report on Kansas Legislative Interim Studies to the 1978 Legislature, Vol. II "RE: PROPOSAL NO. 8-INCOME TAX," page 353, especially at pages 368 and 369.)

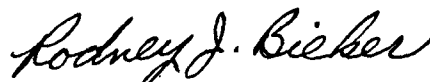
Perhaps there is confusion as to which taxpayers are eligible to use the optional tax tables because subsection (d) of K.S.A. 1980 Supp. 79-32,112a describes groups of taxpayers who may not use said tables, but fails to state that those taxpayers for whom no tax table has been devised also may not use any tax table devised by the secretary. Perhaps that subsection should be amended to clearly state this fact.

In summary, it is our opinion that a person who claims a tax credit for federal income tax purposes different than the credits specifically mentioned in paragraph (i) of subsection (c) of K.S.A. 1980 Supp. 79-32,120, may not use an optional tax table devised by the Secretary of Revenue under the provisions of K.S.A. 1980 Supp. 79-32,112a; instead, such person must use the tax computation schedule.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm