



STATE OF KANSAS

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February 11, 1981

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ATTORNEY GENERAL OPINION NO. 81- 42

Mr. M. Moran Tomson
Stanton County Attorney
P.O. Box 310
Johnson, Kansas 67855

Re: Taxation--Property Valuation, Equalizing Assessments,
Assessors and Assessment of Property--Late Filing;
Failure or Refusal to File; Penalty; Abatement of
Penalty

Synopsis: A board of county commissioners may not order the
refund of a penalty which was properly imposed pursuant
to the mandatory requirements of K.S.A. 1980 Supp.
79-1422. However, the state board of tax appeals
may, in a proceeding initiated under K.S.A. 1980
Supp. 79-1702, order such a refund "where excusable
neglect on the part of the aggrieved taxpayer has
been shown." Cited herein: K.S.A. 79-306, 79-332;
K.S.A. 1980 Supp. 79-1422 and 79-1702.

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Dear Mr. Tomson:

You request our interpretation of K.S.A. 1980 Supp. 79-1422.
Specifically, you ask whether the Stanton County Board of County
Commissioners may refund the penalty which was imposed against
a corporation (in the year 1977) when the corporation voluntarily
filed its list of personal property 19 days after the date prescribed
by K.S.A. 79-306.

K.S.A. 1980 Supp. 79-1422 provides, in part, as follows:

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"In case any person required to file a statement of assessment under the provisions of this act fails to make and file such statement on or before the date prescribed by K.S.A. 79-306, and amendments thereto, but shall file a statement:

. . . .

"2. Between fifteen (15) to thirty (30) days thereafter, the assessor shall after having ascertained the value of the property of such taxpayer, add twenty percent (20%) to the assessed taxable value as a penalty for late filing"

K.S.A. 79-332, which requires the filing of property lists by the owners of oil and gas leases, and which includes penalty provisions similar to those set forth in K.S.A. 1980 Supp. 79-1422, has been construed by the Kansas Supreme Court as follows:

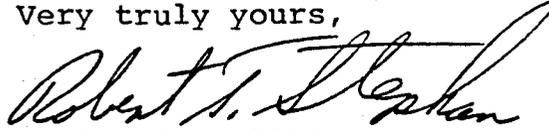
"The assessment of such penalty is not a valuation or assessment function, and the requirement of the statute is mandatory. . . . [Citations omitted.] The assessing official has no discretion as to the imposition of the penalty and is required to impose it in all instances where the taxpayer fails to file a statement or assessment within the required time." Walkemeyer v. Stevens County Oil & Gas Co., 205 Kan. 486, 490 (1970).

In National Cooperative Refinery Ass'n v. Board of McPherson County Comm'rs, 228 Kan. 595 (1980), the provisions of K.S.A. 1980 Supp. 79-1422 were construed to impose no penalty where a statement is filed voluntarily more than 45 days after the prescribed date, since the statute did not expressly cover that situation. The court distinguished the Walkemeyer case, supra, however, on the basis that the penalty imposed in that case "fell squarely within the express provisions of the statute." Id. at 599. Likewise, in the circumstances you describe, subsection 2 of K.S.A. 1980 Supp. 79-1422 expressly and clearly provides that a 20% penalty is to be added to the assessed taxable value of the property. Although the statute authorizes the state board of tax appeals, in a proceeding initiated pursuant to K.S.A. 1980 Supp. 79-1702 (where "excusable neglect" has been shown), to "abate any penalty imposed by the local appraiser and order the

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refund of said abated penalty," we are unaware of any statutory provision which would authorize a board of county commissioners to order such a refund. It is, therefore, our opinion that the Stanton County Board of County Commissioners may not refund the penalty which was imposed against the subject corporation in the year 1977.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm