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ATTORNEY GENERAL OPINION NO. 82- 224

Rod Symmonds
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Emporia, Kansas 66801

Re: Taxation--Gross Earnings from Money, Notes and Other Evidence of Debt--Maximum Rate of Tax; Tax Situs

Synopsis: The "new intangibles tax law," 1982 HB 3142 (L. 1982, ch. 63), effectively limits, to 3%, the rate that can be levied against the gross earnings derived from money, notes and other evidence of debt, because money, notes and other evidence of debt having a tax situs in any city do not have a tax situs in a township. Therefore, a gross earnings tax levied by a board of trustees of a township does not apply to earnings derived from money, notes and other evidence of debt owned by persons who reside within the corporate limits of any city located in such township. Cited herein: K.S.A. 68-518c, K.S.A. 1981 Supp. 79-3109 (now repealed), K.S.A. 79-3111 (now repealed), 79-3115 (now repealed), 80-907, 80-908, 80-932, 80-1413, 80-1503; L. 1982, ch. 63, §1; L. 1982, ch. 407, §1.

* * *

Dear Mr. Symmonds:

Your predecessor requested our opinion concerning the provisions of 1982 House Bill No. 3142 (HB 3142), now found at chapter 63

of the 1982 Session Laws of Kansas. This is the "new intangibles tax law." The specific inquiries presented for our consideration are as follows:

> "(1) Can townships levy intangibles tax on residents of the third class cities located within the township?
>
> "(2) Does House Bill 3142 retain a maximum of 3% that can be levied against the gross taxable income [sic], with .75% of that amount available to the county, and 2.25% for the city or township?"

It is our understanding that the Board of Trustees of Americus Township has imposed the tax at the maximum rate authorized, 2.25%. The Board believes this tax levy is applicable to the gross earnings derived from intangibles owned by people who reside within the corporate limits of Americus City, a city of the third class which is located within the boundaries of Americus Township.

In response to your inquiries, we note initially that, in certain instances, people who reside in third class cities are subject to taxes imposed by the board of trustees of the township in which the city is located. For example, under K.S.A. 80-932, the board of trustees of a township is authorized to levy a property tax to fund the expenses of caring for and maintaining cemeteries. Under this statute, the tax is payable by persons who live in third class cities which are located in the township. However, not all taxes levied by a board of trustees of a township are payable by residents of third class cities located within the township. See, e.g., K.S.A. 68-518c, 80-907 and 80-908, 80-1413, and 80-1503, each of which authorizes a township tax, but excludes from the tax property located in cities of the third class. Thus, in determining whether a tax imposed by a board of trustees of a township is applicable to residents of third class cities, reference must be made to the provisions of the statute which authorizes the imposition of the tax.

Subsection (c) of section 1 of HB 3142, in part, provides:

> "In the year 1982 or any year thereafter, the township board of any township is hereby authorized to adopt a resolution imposing a tax for the benefit of such township upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such township. The rate of tax shall be in the amount of 1/8 of 1% of the total gross

> earnings, or any multiple thereof not exceeding an amount equal to 2 1/4% of the total gross earnings derived from such money, notes and other evidence of debt during the taxable year of the taxpayer ending during the last preceding calendar year." (Emphasis added.)

However, subsection (b) of that section authorizes "the governing body of any city . . . to pass an ordinance imposing a tax for the benefit of such city upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such city." (Emphasis added.) This subsection also provides:

> "The rate of tax shall be in the amount of 1/8 of 1% of the total gross earnings, or any multiple thereof not exceeding an amount equal to 2 1/4% of the total gross earnings derived from such money, notes and other evidence of debt during the taxable year of the taxpayer ending during the last preceding calendar year."

Subsection (a) of section 1 of this new law authorizes the board of county commissioners to levy a tax at a rate not exceeding 3/4 of 1% of the total gross earnings derived from money, notes and other evidence of debt.

This law does not state, in express terms, that gross earnings shall have a tax situs in either a city or a township, and not both. However, based upon well-established rules of statutory construction, we believe this was the intent of the legislature.

In Brown v. Keill, 224 Kan. 195 (1978), the Kansas Supreme Court said:

> "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Inc. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the

> enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].)" Id. at 199.

Also, in State, ex rel., v. Murphy, 183 Kan. 698 (1958), the Court said, at page 702: "Legislative intent must be determined with reference to the situation and existing conditions at the time of enactment."

It is a well-known fact that the provisions of HB 3142 were enacted in response to the decision of the Kansas Supreme Court in Von Ruden v. Miller, 231 Kan. 1 (1982). In this case, the Supreme Court struck down, as unconstitutional, subsection (b) of K.S.A. 1981 Supp. 79-3109. The Court held that this subsection authorized local units of government to reduce or eliminate the statewide 3% tax imposed under subsection (a) of the same statute. This, the Court held, was an unauthorized delegation of legislative authority. Id. at Syl. ¶7.

The decision of the Supreme Court was rendered March 5, 1982. It had the effect of maintaining or, in many locales, of re-establishing the statewide tax, in an amount equivalent to 3% of the gross earnings derived from money, notes and other evidence of debt. Without legislation, therefore, all persons receiving earnings from money, notes and other evidence of debt would have been subject to this tax, at the rate of 3%, subject to certain exemptions prescribed by law.

As a result of the Supreme Court's decision in Von Ruden, two bills concerning intangibles taxation were enacted. One, of course, was HB 3142. The other was 1982 House Bill No. 3130 (HB 3130), L. 1982, ch. 407. Under the provisions of HB 3130, the state-imposed intangibles tax (K.S.A. 79-3108 et seq.) was repealed. However, HB 3142 authorized the imposition of a "local intangibles tax." The minutes of both the Senate and House Assessment and Taxation Committees and those of the Senate and House Ways and Means Committees indicate that the Revisor of Statutes, who had been requested by the committees to explain the provisions of HB 3142, advised the committees that the bill "attempts to maintain the status quo for those local units of government which are the beneficiaries of intangibles tax." (Minutes of the House Committee on Assessment and Taxation, March 17, 1982, p. 2.) Similar statements appear in the minutes of the Senate Committee on Ways and Means, for April 6, 1982, at pages 2-3. But, what was the "status quo?"

Under K.S.A. 79-3115 (now repealed), the county would have received 3/4 of 1% of the tax collected and the city or township in which a taxpayer resided would have received the remaining 2 1/4% of the tax revenue. Pursuant to K.S.A. 79-3111 (now repealed), the director of taxation would have certified to the county clerk of each county the amount of intangibles tax to be levied in the county and each city or township in the county. Under the certification from the director, an amount of intangibles tax owed by a particular taxpayer would have been paid to the county and to the city or the township in which the taxpayer resided. The place of residence of a taxpayer was determined by specific inquiries included in the intangibles tax return. If a taxpayer resided in an incorporated city, the taxpayer was not to provide the name of the township in which the city was located. Thus, the provisions of the "state-imposed" intangible tax, which allowed counties, cities and townships to fix the rate of the tax, were interpreted and administered by the director of taxation as providing that taxpayers residing in any incorporated city did not owe taxes to a township. This had always been the interpretation given to, and the method of administering, the provisions of the "state-imposed" intangibles tax, K.S.A. 79-3108 et seq. (now repealed).

In regard to this, we find pertinent the following statement of the Court in Rogers v. Shannahan, 221 Kan. 221 (1977):

> "It is presumed the legislature had and acted with full knowledge and information as to the subject matter of the statute, as to prior and existing law and legislation on the subject of the statute and as to the judicial decisions with respect to such prior and existing law and legislation." Id. at 225.

We assume, therefore, that the legislature was fully aware of the provisions of K.S.A. 79-3115 and the manner in which the provisions it adopted in HB 3142 had been interpreted in the past. Except for the additional exemptions which are provided and the fact that the rate of tax is no longer fixed by statute, the "gross earnings" tax in HB 3142 perpetuates the essential provisions of K.S.A. 79-3108 et seq., virtually without change. Accordingly, consistent with established rules of statutory construction and the testimony presented to the committees of the 1982 Legislature which considered HB 3142, we must conclude that the provisions of HB 3142 do, in fact, reflect an underlying legislative intent to preserve the "status quo" achieved by the essential provisions of the prior law. Thus, in order to effectuate the legislature's intent and purpose [see Kansas State Board of Healing Arts v. Dickerson, 229 Kan. 622 (1981), and the cases cited therein at

630], HB 3142 must be construed as requiring that the intangibles of a taxpayer who resides in a city have a tax situs in such city and not in the township in which the city is located, thereby effectively perpetuating the prior law's 3% limitation on the tax which may be imposed. In our judgment, such interpretation is the only means for preserving the "status quo" sought by the legislature.

Clearly, if HB 3142 is interpreted to provide that the residents of third class cities are subject to a county intangibles tax, a city intangibles tax, and a township intangibles tax, the status quo is not maintained. Under such interpretation, those people could be required to pay as much as 5 1/4% of the gross earnings they receive from money, notes and other evidence of debt, as taxes under HB 3142. This total would be comprised of a county tax of 3/4 of 1%, a city tax of 2 1/4%, and a township tax of 2 1/4%. Under the prior law, those people were subject to a maximum tax of 3%. In addition, both the city and the township in which these people reside would receive proceeds from the intangibles tax levy. This was not true under the provisions of K.S.A. 79-3111 and 79-3115, which were discussed above.

In summary, therefore, we are of the opinion that, under HB 3142, the maximum amount of levy that can be imposed upon money, notes and other evidence of debt is 3%. In our judgment, HB 3142 must be interpreted as specifying that intangibles having a tax situs in a city do not have a tax situs in a township. Thus, a gross earnings tax levied by a board of trustees of a township does not apply to earnings derived from money, notes and other evidence of debt owned by persons who reside within the corporate limits of a city located in such township.

Finally, we encourage the legislature to consider stating specifically its position in regard to this matter, whenever it considers other legislative clarifications of the provisions of HB 3142.

Very truly yours,

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