



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 114

The Honorable James E. Lowther
State Representative, Sixteenth District
1549 Berkeley Road
Emporia, Kansas 66801

Re: Taxation -- Income Tax -- Due Process; Retroactive
Application

Synopsis: The 1983 changes in K.S.A. 1982 Supp. 79-32,120, concerning the amount of federal tax liability that may be deducted in calculating state income tax liability, effective as of the beginning of the 1983 tax year, do not violate the principle of due process of law. Cited herein: K.S.A. 1982 Supp. 79-32,120, as amended by L. 1983, ch. 327, §1, U.S. Const., Amend. XIV.

* * *

Dear Representative Lowther:

You seek our opinion on whether the application of the amendment of K.S.A. 1982 Supp. 79-32,120 by section 1 of 1983 Senate Bill No. 436 to the entire 1983 tax year constitutes a denial of due process of law because the statute impairs vested rights. These changes limit the amount of federal income tax liability that may be deducted in calculating state tax liability. You indicate that this law was not enacted until April, 1983. You then explain that, prior to such time, many taxpayers made business decisions "in reliance on the law as it was in effect for the 1983 tax year at the time the decisions were made and in reliance that the law then in effect was applicable for the entire 1983 tax year." Thus, you question whether the amendment to the statute violates the due process of law guarantee of the Fourteenth Amendment to the United States Constitution.

Although we find no pertinent Kansas appellate court cases, there are several federal court cases that address this

issue. The most recent and particularly analogous case is United States v. Darusmont, 449 U.S. 292, 101 S.Ct. 549, 66 L.Ed.2d 513 (1981), which involved the Congressional amendment of the Internal Revenue Code, on October 4, 1976. The amendment was made applicable to all taxable years commencing after December 31, 1975. The taxpayer involved in the case, sold property he owned on July 15, 1976. The date of the sale preceded the amendment of the federal tax law. Had the federal law not been amended, the taxpayer would have owed no tax in regard to the sale of the property. However, under the amended law, the taxpayer was assessed tax in the amount of \$2,280. The taxpayer argued that application of the amendment to the sale of his property was a denial of due process, since the sale was completed months before the statutory amendment was enacted. In rejecting the taxpayer's argument, the United States Supreme Court said:

"The Court consistently has held that the application of an income tax statute to the entire calendar year in which enactment took place does not per se violate the Due Process Clause of the Fifth Amendment. [Citations omitted.]

"Justice Miller succinctly stated the principle a century ago in writing for the Court in Stockdale, supra:

"'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, cannot be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed.' 20 Wall, at 331, 22 L.Ed. 348.

"Justice Van Devanter in writing for the Court in Hudson, supra, similarly approved the congressional practice:

"'As respects income tax statutes it long has been the practice of Congress to make them retroactive for relatively short periods so as to include profits from transactions consummated while the statute was in process of enactment, or within so much of the calendar year as preceded the enactment; and repeated decisions of this Court have recognized this practice and sustained it as consistent with the due process clause of the Constitution.' 299 US, at 500, 81 L.Ed. 370, 57 S.Ct. 309.

. . . .

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"Judge Learned Hand also commented upon the point and set forth the answer to the constitutional argument:

"'Nobody has a vested right in the rate of taxation, which may be retroactively changed at the will of Congress at least for periods of less than twelve months; Congress has done so from the outset" 449 U.S. at 297-298.

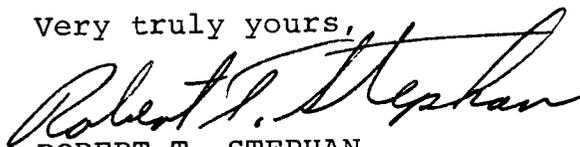
In applying the foregoing principles to the amended statute with which it was concerned, the Court said:

"The 1976 changes affected appellee [taxpayer] only by decreasing the allowable exemption and increasing the percentage of the tax. . . . Congress possessed ample authority to make this kind of change effective as of the beginning of the year of enactment." 449 U.S. at 300.

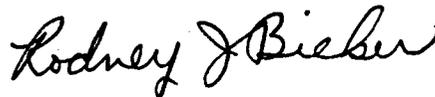
The above-quoted United States Supreme Court case is replete with citations to other cases in which the same conclusion was reached.

Based upon the court decisions referenced above, we conclude that the 1983 changes in K.S.A. 1982 Supp. 79-32,120, concerning the amount of federal tax liability that may be deducted in calculating state income tax liability, effective as of the beginning of the 1983 tax year, do not violate the principle of due process of law as contained in the United States Constitution.

Very truly yours,



ROBERT T. STEPHAN
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RTS:BJS:RJB:hle