



STATE OF KANSAS

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November 22, 1983

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ATTORNEY GENERAL OPINION NO. 83- 171

L. Franklin Taylor
DeSoto City Attorney
Payne & Jones
P.O. Box 10
The Tower Building
200 South Chestnut
Olathe, Kansas 66061

Re: Taxation--Kansas Retailers' Sales Tax--Exempt
Sales

Synopsis: A sale of natural gas, electricity, heat or water (delivered through mains, lines or pipes) to the owner of a mobile home park, for noncommercial use of the owner's tenants or lessees, is within the exemption from retailers' sales tax prescribed by subsection (x) of K.S.A. 1982 Supp. 79-3606, provided the utility services are delivered to "residential premises."

Any claim for refund of retailers' sales taxes must be filed by the taxpayer with the Director of Taxation within three years from the date of payment of the tax. Cited herein: K.S.A. 12-105b, K.S.A. 1982 Supp. 79-3602, 79-3606, K.S.A. 79-3609, 79-3618, K.A.R. 92-19-25, K.A.R. 1982 Supp. 92-19-38.

* * *

Dear Mr. Taylor:

You request our opinion on three issues relating to public utilities operated by the city of DeSoto. Your specific questions are as follows:

"1. Whether the exemption of K.S.A. 79-3606(x) to the Kansas Retailers' Sales Tax applies to utility services (water and electricity) purchased by the owners of trailer parks in the City of DeSoto, Kansas, for use by the trailer park residents.

"2. Whether, if the exemption does apply, K.S.A. 12-105b(a) provides the exclusive means of claiming a refund.

"3. Whether, if refunds are permissible, the three-year statute of limitations provided in K.S.A. 79-3609 applies or whether some shorter statute of limitation would apply."

In regard to the first question, K.S.A. 1982 Supp. 79-3606(x) exempts the following sales from the retailers' sales tax:

"[A]ll sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises." (Emphasis added.)

The above-quoted provision exempts sales of utility services provided they are made "to residential premises for noncommercial use by the occupant of such premises." Although it might be argued that a landlord who supplies utility services under a rental agreement is motivated by commercial considerations, it is to be noted that the motives (whether commercial or non-commercial) of the purchaser of utility services are irrelevant in determining whether a sale is within the exemption. The restriction relating to "noncommercial use" applies only to use of the utility services by the occupant, and the above-quoted provision does not prescribe that only an occupant may claim the exemption. In our judgment, a sale of utility services to an owner of a mobile home park, for noncommercial use of his or her tenants (lessees), is within the subject exemption, provided the utility services are delivered to "residential premises." In this regard, the Secretary of Revenue has, pursuant to regulatory authority granted by K.S.A. 79-3618, defined the term "residential premises" as follows:

"[R]esidential premises means and includes any building or structure, or portion thereof, used for human habitation. Such term shall not include travel trailers or recreational vehicles." K.A.R. 1982 Supp. 92-19-38.

L. Franklin Taylor
Page Three

Mobile homes used for human habitation are not, in our opinion, "travel trailers" and are thus within the above definition of residential premises.

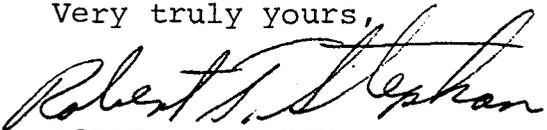
In regard to your second question, it is our opinion that the provisions of K.S.A. 12-105b, relating to presentment and allowance of claims against a municipality, are not applicable to allowance of a claim for refund of state retailers' sales taxes. Pursuant to K.S.A. 79-3609, any such claim should be filed by the taxpayer, i.e. the city [see K.S.A. 1982 Supp. 79-3602(i)], with the Director of Taxation. At the time of filing such a claim, it would be appropriate for the city to provide exemption certificates from the mobile home park owners and any other information supporting the claim for exemption. See K.A.R. 92-19-25. If a refund is allowed, it is a routine requirement (according to officials of the Kansas Department of Revenue) that the city, acting as a retailer, must agree to distribute the proceeds of the refund to those who paid the tax in the first instance (i.e., the mobile home park owners).

Finally, in response to your third question, K.S.A. 79-3609 provides, in part, as follows:

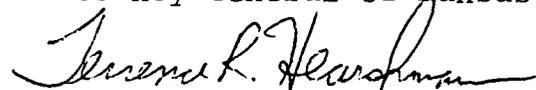
"No refund or credit shall be allowed by the director after three (3) years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six (6) months from the date of filing a claim therefor with the director."

In our opinion, the period of limitations prescribed by the above-quoted statute is applicable to any claim for a refund of state retailers' sales taxes, except where said period has been extended pursuant to procedures set forth in the afore-said statute. Further, it should be noted that a sales tax refund is not allowable for a sale occurring prior to the effective date of an exemption.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm