



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

July 7, 1986

ATTORNEY GENERAL OPINION NO. 86- 96

Frank C. Beyerl
Greenwood County Attorney
223 N. Main
Eureka, Kansas 67045

Re: Taxation -- Collection and Cancellation of Taxes --
County Treasurer's Acceptance of Partial Payment of
Delinquent Property Taxes

Synopsis: K.S.A. 79-2004 and K.S.A. 79-2004a deal with the
time for payment of real estate and personal
property taxes. By expressly giving the taxpayer
the option to pay the full amount immediately or
one-half of the full amount assessed at a time,
the statutes exclude all other options available to
the taxpayer. Accordingly, a county treasurer may
not be compelled to accept partial payment on any
delinquent taxes, although he or she may do so in
his or her discretion, crediting it to the tax
assessed. Cited herein: K.S.A. 79-2002; 79-2004,
79-2004a; K.S.A. 1985 Supp. 79-2101; Comp. Laws
of 1879, §89, §91.

* * *

Dear Mr. Beyerl:

As Greenwood County Attorney, you request our opinion
regarding the partial payment of delinquent property taxes.
Specifically, you inform us that the Greenwood County
Treasurer has refused to accept partial payment on any
delinquent taxes, and inquire as to whether she may be

compelled to do so. In answering your question, we find it initially helpful to refer to 84 C.J.S. §624 on Taxation. The sub-heading on partial payment provides:

"Except where part payment is authorized by statute, or where the taxes are separable, acceptance of part payment cannot be compelled, although an officer may accept it in his discretion."
(Emphasis added.)

The section explains that the law ordinarily intends that taxes shall be paid in full at one time and, unless part payment is authorized by statute, a taxpayer cannot tender a portion of the tax due and demand a receipt therefor. However, it goes on to state that this does not mean the officer may not legally accept a partial payment, and in fact he may do so in his discretion, crediting it to the tax assessed.

We are aware that your question is directed toward the collection of delinquent, not current, property taxes. K.S.A. 1985 Supp. 79-2101, the statute which deals with the collection of delinquent taxes, specifies:

"All the taxes on personal property that remain due and unpaid on February 16 or July 1 shall be collected in the following manner:

"If such taxes remain unpaid for a period of 30 days after mailing such notice, the county treasurer shall forthwith issue a warrant under the treasurer's hand directed to the sheriff of the county, commanding the sheriff to levy the amount of such unpaid taxes and the interest thereon, together with the sheriff's fees for collecting the same, upon any personal property, tangible or intangible, of the person, firm, unincorporated association, company or corporation to whom such taxes were assessed."

Thus, if personal property taxes are not paid to the county treasurer by February 16 or July 1 of the year due, they

become delinquent and must be collected according to the provisions of K.S.A. 1985 Supp. 79-2101, rather than pursuant to K.S.A. 79-2004a. However, we find no differences in the statutes which deal with the payment of current taxes (K.S.A. 79-2004 and 79-2004a), and the statute which deals with the payment of delinquent taxes (K.S.A. 1985 Supp. 79-2101), which would compel a county treasurer to accept partial payment on delinquent taxes when the treasurer cannot be compelled to accept the same on current taxes. Therefore, we find the provisions of K.S.A. 79-2004 and 79-2004a, and the case law in Sheriff v. Ainsworth, 27 Kan. 446 (1882), to be relevant in answering your inquiry.

K.S.A. 79-2004 deals with the time for payment of real estate taxes, and states at subsection (a):

"Any person charged with real estate taxes on the tax books in the hands of the county treasurer may pay, at such person's option, the full amount thereof on or before December 20 of each year, or 1/2 thereof on or before December 20 and the remaining 1/2 on or before June 20 next ensuing."

Similarly, K.S.A. 79-2004a deals with the time for payment of personal property taxes, and states:

"Any person, firm, unincorporated association, company or corporation charged with personal property taxes on the tax books in the hands of the county treasurer may at its option pay the full amount thereof on or before December 20 of each year, or 1/2 thereof on or before December 20 and the remaining 1/2 thereof on or before June 20 next ensuing,"

"In the event any one so charged with personal property taxes shall fail to pay the first half thereof on or before December 20, then the full amount thereof shall become immediately due and payable."
(Emphasis added.)

Thus, the Kansas statutes dealing with the collection and cancellation of taxes authorize the payment of taxes in one of two ways: either the full amount can be paid on or before December 20 of each year, or one-half of the full amount can be paid on or before December 20 and the remaining one-half on or before June 20 next ensuing.

We rely on the Latin phrase expressio unius, exclusio alterius in concluding that by expressly giving the taxpayer the option to pay the full amount immediately or one-half of the full amount assessed at a time, the statutes exclude all other options on the part of the taxpayer. Therefore, as our statutes do not authorize any other partial payment of real estate taxes or personal property taxes, the taxpayer must either pay the full amount on or before December 20, or pay half and half pursuant to K.S.A. 79-2004 and K.S.A. 79-2004a.

This result is supported by an early decision of the Kansas Supreme Court which addressed the question of whether a taxpayer can at his option tender to the county treasurer a part of the taxes assessed upon any specific property, and compel him to receive and issue a receipt for such portion. The court stated:

"A county treasurer cannot be compelled to receive taxes by piecemeal, nor obliged to give any receipt unless a full payment is made. Any other rule would throw a great burden on the officer, beside casting into the county records great confusion."
Sheriff v. Ainsworth, 27 Kan. 446, 448
(1882).

This decision was based on §89 of the tax law (Comp. Laws of 1879, p. 957), which provided:

"When the treasurer shall receive any tax, he shall give a receipt therefor.
If upon land or town lot, the receipt shall describe the land as it is described in the tax roll, and give the valuation thereof; and if upon personal property, it shall state the value thereof, and on the reverse side it shall give the amount of each kind of tax on each one hundred dollars." (Emphasis added.)

Our present statute on tax receipts by the county treasurer, K.S.A. 79-2002, provides:

"Receipts shall be given for all taxes received by the county treasurer.

Payment of current ad valorem property taxes shall be validated by a statement indicating the date received and the amount paid on all copies of such receipts." (Emphasis added.)

Both statutes impose the requirement that receipts shall be given for all taxes received by the county treasurer. Based on this requirement, the 1882 Kansas Supreme Court found that §89 implied that the treasurer was entitled to the entire tax before being required to give a receipt, and that the taxpayer could not tender any sum of money he saw fit, and have the same credited on his taxes, or demand a receipt for the money thus paid.

The Court found this implication was made stronger by §91 of the tax law, which provided:

"[A]ny person charged with taxes, on the tax book in the hands of the county treasurer, may, at his option, pay the full amount thereof on or before the 20th day of December of each year, or one-half on or before the 20th day of December, and the remaining one-half on or before the 20th day of June next ensuing."

While K.S.A. 79-2004 and 79-2004a separate the payment of taxes into real estate taxes and personal property taxes, both statutes contain wording nearly identical to that which was relied on by the Kansas Supreme Court in 1882. That Court stated:

"Giving him by express statute the option to pay one-half at a time, excludes all other option on the part of the taxpayer. This is the clear intendment of the statute, and we need go no further than rest upon its language."

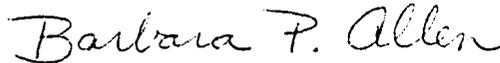
We concur in this result, and conclude that a taxpayer does not have the right to make partial payment on delinquent property taxes.

In summary, K.S.A. 79-2004 and K.S.A. 79-2004a deal with the time for payment of real estate and personal property taxes. By expressly giving the taxpayer the option to pay the full amount immediately or one-half of the full amount assessed at a time, the statute excludes all other options available to the taxpayer. Accordingly, a county treasurer may not be compelled to accept partial payment on any delinquent taxes, although he or she may do so in his or her discretion, crediting it to the tax assessed.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General

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