



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 86-147

Nanette L. Kemmerly-Weber  
Allen County Attorney  
Allen County Courthouse  
Iola, Kansas 66749

Re: Taxation--Collection and Cancellation of  
Taxes--Claims Allowed; Personal Property Tax on  
Motor Vehicles

Synopsis: When the owner of an automobile transfers its title and does not obtain a replacement vehicle, if the motor vehicle tax has been paid the owner is entitled to a refund of the unused portion of taxes. Such refund is not to be considered a claim against the county for purposes of offsetting other delinquent personal property taxes. Cited herein: K.S.A. 1985 Supp. 8-173; K.S.A. 12-105a; 79-2010; K.S.A. 79-5101 et seq.; 79-5107, 79-5115; K.A.R. 92-55-3.

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Dear Ms. Kemmerly-Weber:

As attorney for Allen County, you have requested our opinion concerning the refund of unused portions of automobile tag fees and personal property taxes when an automobile owner transfers title of the vehicle and does not replace the vehicle with another. Specifically, you inquire whether a requested refund should be considered as a claim against the county, and therefore subject to retention as payment for any delinquent personal property tax owed to the county by the taxpayer/automobile owner. It is our opinion that when a tax

has been imposed pursuant to K.S.A. 79-5101 et seq., and the owner transfers the taxed vehicle without substituting a replacement vehicle, the refund which is due the owner is not subject to retention as payment for the owner's other delinquent personal property taxes.

Motor vehicles are taxed pursuant to K.S.A. 79-5101 et seq. Such taxes are levied annually, and are due on or before the date for annual registration as provided by law. K.S.A. 79-5107 states in relevant part:

"Whenever the tax imposed under this act has been paid upon any motor vehicle and title to such vehicle is transferred and no replacement vehicle is substituted therefore such taxpayer shall be entitled to a refund. . . . All refunds shall be paid by the county treasurer from the moneys received from taxes upon motor vehicles imposed by this act. . . ." (Emphasis added.)

Under the authority of K.S.A. 79-5115, the secretary of revenue has adopted rules and regulations to administer these provisions. K.A.R. 92-55-3 provides the procedure for applying for such refunds. It appears that payment of the refund is not discretionary, with one exception. Paragraph four of the regulation states that the county, instead of making the refund, may credit the amount of the refund against the motor vehicle tax imposed against any other motor vehicle being registered by the owner which is not a replacement vehicle solely because the registration plates are not transferable from one vehicle to the other. With this exception, in accordance with K.S.A. 79-5107, the refund is an entitlement.

With respect to collection of unpaid taxes, K.S.A. 79-2010 provides that, when a board of county commissioners allows a claim against the county, the claim must be certified to the county treasurer. The county treasurer must check the claim against delinquent tax lists, and is authorized to credit the delinquent taxpayer for the amount of the claim. We do not believe that a refund for the unused portion of a motor vehicle tax is to be considered a claim for purposes of the article concerning collection of taxes. K.S.A. 12-105a et seq. provide a uniform procedure for payment of claims by municipalities, including counties. Under that act, a claim is defined as:

"the document relating to and stating an amount owing to the claimant by a municipality for material or service furnished to the municipality, or some action taken by or for the municipality and for which the municipality may or may not be responsible in a liquidated or an unliquidated amount. . . ." K.S.A. 12-105a(c). (Emphasis added.)

While a claim, as considered in K.S.A. 79-2010, may not necessarily be limited by the above-stated definition, both K.S.A. 79-2010 and 12-105a(c) appear to contemplate an option by the board of county commissioners: either allow a claim by paying it, or raise defenses to the claim. In other words, the claim does not reach the level of an entitlement, as does a refund for tag fees and personal property tax on an automobile, because the municipality can raise defenses in litigation of the claim.

We note that the statutes do provide the county a specific procedure for collecting delinquent personal property taxes prior to accepting application for registration of a vehicle. K.S.A. 1985 Supp. 8-173 provides as follows:

"An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated and amendments thereto, shall not be accepted unless the person making such application shall exhibit:

"(a) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year, including taxes upon such vehicle, except that if such application is made before June 21 such receipt need show payment of only one-half the preceding year's tax; or

"(b) evidence that such vehicle was assessed for taxation purposes by a state agency, or was assessed as stock in trade of a merchant or manufacturer or was exempt from taxation under the laws of this state."

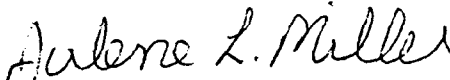
Further, the Kansas Court of Appeals has upheld the constitutionality of this statute. State v. Raulston, 9 Kan.App.2d 714 (1984).

In conclusion, it is our opinion that when an automobile owner transfers title to the motor vehicle and does not obtain a replacement vehicle, if the motor vehicle tax has been paid the owner is entitled to a refund of the unused portion of taxes. Such refund is not to be considered a claim against the county for purposes of offsetting other delinquent property taxes.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm