



STATE OF KANSAS

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February 5, 1987

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ATTORNEY GENERAL OPINION NO. 87- 20

John J. Gillett
Wilson County Attorney
Wilson County Courthouse, Room 201
P.O. Box 556
Fredonia, Kansas 66736

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Taxation of Royalty Interest on Oil and Gas Lease

Synopsis: If a person sells his personal property after it has been assessed and before the tax has been paid, an in rem tax lien follows the property into the hands of the purchaser. K.S.A. 79-2110. However, if three or more years pass from the time the tax becomes due and payable to the time the county attempts to enforce the lien, the property owner (purchaser) is no longer liable for the tax. In light of this limitation, even though a lien followed the royalty interest in question upon its sale in 1981, Wilson County is prohibited from collecting any 1981 personal property taxes owing on the royalty interest, as more than three years have passed since the unpaid taxes became due.

Wilson County may collect the personal property taxes on the royalty interest owed to the county for the years 1982 to the present. K.S.A. 1986 Supp. 79-1475. Furthermore, penalties may be assessed by the county for the years 1983 to the present. K.S.A. 1986 Supp. 79-1427a. Cited herein: K.S.A. 79-306; 79-329; K.S.A. 1986 Supp. 79-1427a; 79-1475; K.S.A. 79-2110.

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Dear Mr. Gillett:

As Wilson County Attorney, you request our opinion on whether the county can collect several years' worth of delinquent personal property taxes for a royalty interest on an oil and gas lease, now that the true owner of the royalty interest in question has come to light.

The facts, as stated in your request letter, are as follows. The royalty interest of an oil and gas lease on a piece of land in Wilson County was sold in 1981. For unknown reasons, the company which was the owner of the working interest and the operator of the lease neglected to update the 1982 listing of the lease to reflect the change in interest owners. Because the conveyance was not noted on the 1982 listing, the appraiser's office continued to send delinquent tax statements to the previous owner of the royalty interest, and later to his estate after he became deceased.

In October, 1986, the Wilson County Appraiser was made aware of the 1981 conveyance of the royalty interest. You now inquire as to whether Wilson County can collect the delinquent personal property taxes owed to the county on the royalty interest from the past several years.

An oil and gas lease is by law declared to be personal property for ad valorem tax purposes. K.S.A. 79-329. Thus, in determining whether Wilson County can collect any or all of the back taxes from the current royalty interest owners, it is necessary to apply the Kansas personal property tax statutes to the aforementioned facts.

Initially, we note that the listing for an oil and gas lease owned by a corporation is due in the appraiser's office by April 1 of each tax year. K.S.A. 79-306. It is the responsibility of the operator of each lease to list this property. The listing usually includes well information, any changes made in the lease, and a listing of the names and addresses of the current interest owners, both working and royalty.

It is unclear from the facts we received whether the 1981 personal property taxes on the royalty interest are delinquent. If the previous owner of the royalty interest did not pay his 1981 taxes, it is our opinion that Wilson County cannot collect these taxes from the current owners.

K.S.A. 79-2110 provides in part:

"If any person in this state, after his or her personal property is assessed and before the tax thereon is paid, shall sell all of the same to any one person, and not retain sufficient to pay the taxes thereon, the tax for that year shall be a lien upon the property so sold, and shall at once become due and payable, and the county treasurer shall at once issue a tax warrant for the collection thereof, and the sheriff shall forthwith collect it as in other cases. The one owing such tax shall be civilly liable to any purchaser of such property for any taxes he or she owes thereon, but the property so purchased shall be liable in the hands of the purchaser or purchasers for such tax." (Emphasis added.)

Thus, under the provisions of this statute, an in rem tax lien follows the property into the hands of the purchaser or purchasers. Accordingly, it would initially appear that the current owners would be liable for the unpaid taxes of the previous owner.

However, K.S.A. 79-2110 goes on to provide:

". . . no personal property which has been transferred in any manner after it has been assessed shall be liable for the tax in the hands of the transferee after the expiration of 3 years from the time such tax became originally due and payable." (Emphasis added.)

In light of this statutory limitation, even though a lien followed the royalty interest in question upon its sale in 1981, it is our opinion that Wilson County cannot collect any owing 1981 personal property tax from the current royalty interest owners, as more than three years have passed since the unpaid taxes became due.

In our judgment, however, Wilson County may collect from the current owners all back taxes owing for the years 1982 to the present. K.S.A. 1986 Supp. 79-1475 provides:

"Whenever the county appraiser discovers that any property subject to taxation has been omitted from the tax rolls, such property shall immediately be listed and valued by the appraiser, and returned to the county clerk. The county clerk, upon receipt of the valuation for such property, shall compute the amount of tax due based upon the mill levy for the year in which such tax should have been levied, and shall certify such amount to the county treasurer as an added or escaped appraisal. The county treasurer shall proceed to collect and distribute such tax in the same manner as prescribed by law for the collection and distribution of other taxes levied on property."
(Emphasis added.)

Thus, a county is not barred from collecting delinquent personal property taxes simply because of the passage of time. Rather, as long as the property has not been transferred to another owner subsequent to assessment, a county may collect personal property taxes due to the county at any time.

In our judgment, Wilson County may additionally impose a penalty for the current royalty interest owners' failure to pay their personal property taxes. K.S.A. 1986 Supp. 79-1427a provides:

"(a) If, after one year from the date prescribed by K.S.A. 79-306, and amendments thereto, for the listing of tangible personal property, the county appraiser discovers that any tangible personal property which was subject to taxation in any year or years within four years next preceding has not been listed or has been underreported for whatever reason, such property shall be deemed to have escaped taxation. In the case of property which has not been listed, it shall be the duty of the county appraiser to list and appraise such property and add 100% thereto as a penalty for escaping taxation for each such year during which such property was not listed, and it shall

be designated on the appraisal roll as
'escaped appraisal' for each such
preceding year or years.

. . . .

"(c) The provisions of this section shall apply to any tangible personal property discovered during the calendar years 1982, 1983, 1984 and any year thereafter to have escaped appraisal and taxation during any such year or any year within four years next preceding any such year." (Emphasis added.)

Taking into consideration the provisions of K.S.A. 1986 Supp. 79-1427a, it is our opinion that Wilson County may penalize the current royalty interest owners for escaped taxes during the last four years. Thus, Wilson County may impose a penalty back through the 1983 tax year. Since the 1982 tax year falls outside of the statutorily-imposed "4 year period," a penalty may not be imposed for this year.

We note that, in most circumstances, the party responsible for paying the tax is also the party responsible for listing the property within the appraiser's office. Thus, the party who lists the property knows that he or she must pay the tax. In this situation, however, the party responsible for listing the property and the party responsible for paying the tax are different people. It is conceivable, therefore, that the current property interest owners were not aware that property taxes were due on their royalty interest. Since the party responsible for listing the property neglected to inform the appraiser's office of the change in the royalty interest ownership, the county was never able to inform the current owners that their taxes were delinquent. The recourse available to the current owners, should they contest the assessment, is to appeal the imposition of a penalty to the state board of tax appeals, as provided for by K.S.A. 1986 Supp. 79-1427a(b).

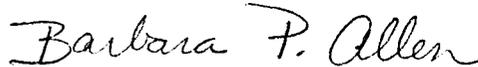
In conclusion, if a person sells his personal property after it has been assessed and before the tax has been paid, an in rem tax lien follows the property into the hands of the purchaser. K.S.A. 79-2110. However, if three or more years pass from the time the tax becomes due and payable to the time the county attempts to enforce the lien, the property owner (purchaser) is no longer liable for the tax. In light of this

limitation, even though a lien followed the royalty interest in question upon its sale in 1981, Wilson County is prohibited from collecting any 1981 personal property taxes owing on the royalty interest, as more than three years have passed since the unpaid taxes became due.

Wilson County may collect the personal property taxes on the royalty interest owed to the county for the years 1982 to the present. K.S.A. 1986 Supp. 79-1475. Furthermore, penalties may be assessed by the county for the years 1983 to the present.

Very truly yours,


ROBERT T. STEPHAN
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Barbara P. Allen
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