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ATTORNEY GENERAL OPINION NO. 89- 88

Gene Porter
Barton County Attorney
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Great Bend, Kansas 67530

Re: Taxation -- Collection and Cancellation of Taxes --
Time for Payment of Personal Property Taxes;
Computation of Interest When County Treasurer
Accepts Partial Payment of Delinquent Personal
Property Taxes

Synopsis: K.S.A. 1988 Supp. 79-2004a provides for the accrual of interest on delinquent personal property taxes. When a county treasurer accepts a partial payment of delinquent personal property taxes, future computations of interest should be based on the amount of delinquent taxes remaining unpaid after crediting the partial payment, rather than on the full amount of delinquent taxes originally owing. A different rule may apply if the delinquent taxes become a "judgment" under the operation of K.S.A. 1988 Supp. 79-2101. Cited herein: K.S.A. 1988 Supp. 79-2004a; 79-2101.

* * *

Dear Mr. Porter:

As Barton County Attorney, you request our opinion regarding the computation of interest when a county treasurer accepts partial payments of delinquent personal property taxes. Specifically, you ask whether a county treasurer should compute future interest based upon the amount of delinquent taxes remaining unpaid after a partial payment, or should

continue to charge interest on the full amount of delinquent taxes originally owing until the entire balance is paid.

The procedure to be followed in computing interest on delinquent personal property taxes is set forth in K.S.A. 1988 Supp. 79-2004a:

"In the event anyone charged with personal property taxes shall fail to pay the first half thereof on or before December 20, the full amount thereof shall become immediately due and payable.

In case the first half of the taxes remains unpaid after December 20, the entire and full amount of personal property taxes charged shall draw interest at the rate per annum prescribed by K.S.A. 79-2968(b) and amendments thereto, from December 20 to date of payment. All personal property taxes of the preceding year and interest thereon which shall remain due and unpaid on June 21 shall draw interest at the rate per annum prescribed by K.S.A. 79-2968(b), and amendments thereto, from June 20 until paid." (Emphasis added.)

The statute does not specifically provide for partial payment of delinquent personal property taxes. However, county treasurers may discretionarily accept partial payments in certain circumstances. See Attorney General Opinion No. 86-96. The statute does not contain instruction for computing interest when partial payment is made. Therefore, the rules of statutory construction must be applied.

The primary rule of statutory construction is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. National Cooperative Refinery Ass'n v. Board of McPherson County Commr's, 228 Kan. 595, 597 (1980). The language of K.S.A. 1988 Supp. 79-2004a does not provide clear intent on this issue because it does not indicate whether the words "payment" and "paid" refer exclusively to payment of the "entire and full amount" of delinquent taxes charged, or whether they apply equally to partial payments. A subordinate rule of statutory construction holds that words in common usage are to be given their natural and ordinary meaning in arriving at the proper

construction of a statute. In re Tax Appeal of Black, 9 Kan.App.2d 666, 668 (1984). Black's Law Dictionary 71 (5th ed. 1979) defines "interest" as "the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money." It would be more consistent with this ordinary meaning to charge interest on the amount of unpaid delinquent taxes remaining after a partial payment rather than to continue charging interest on amounts that have already been paid.

Further, "where there is reasonable doubt as to the meaning of a taxing act, it will be construed most favorably to the taxpayer. . . . Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it." National Cooperative Refinery Ass'n, 228 Kan. at 597. Given this rule of construction, the language of the statute is too ambiguous to support the more punitive approach of charging interest on the portion of delinquent taxes that has already been paid.

Additional guidance can be obtained from the Kansas Supreme Court's treatment of partial payments on interest-bearing commercial debts. "According to the United States rule, in the absence of an agreement or a statute to the contrary, partial payments to an interest-bearing debt which is due are first applied to the interest due. If the payment exceeds the interest, the surplus goes toward discharging the principal, and the subsequent interest is computed on the remaining principal due." Shutts v. Phillips Petroleum Co., 240 Kan. 764, 798 (1987) (emphasis added). Nothing in the statute indicates that the term "interest" as applied to delinquent personal property taxes should be handled differently than in an ordinary commercial transaction.

Therefore, it is our opinion that if a county treasurer properly and legally accepts partial payment toward delinquent personal property taxes, interest should be computed only on the balance of delinquent taxes that remain unpaid after crediting the partial payment, rather than on the full amount of delinquent taxes originally owed.

Once delinquent personal property taxes become a "judgment" under K.S.A. 1988 Supp. 79-2101 this result may be altered. According to that statute, unpaid personal property taxes ". . . shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil procedure" upon the filing of an abstract of the delinquent

taxes and the last tax warrant. Thus, at some point, a tax debt becomes a judgment.

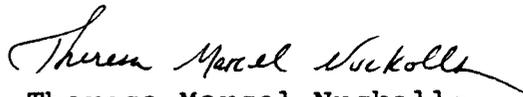
The Kansas Supreme Court has not stated a clear position on how interest is to be computed when partial payment of a tax debt is made after a judgment. However, in McGuire v. Sifers, 235 Kan. 368, 382 (1984), the court reviewed Schaefer and Associates v. Schirmer, 3 Kan.App.2d 114, (1979), and Bartlett v. Heersche, 209 Kan. 369, (1972), two cases that dealt with the issue of tolling interest on judgments. The court concluded:

"Neither Bartlett nor Schaefer addresses the question of whether partial payment of a judgment tolls postjudgment interest on the portion paid into court, but the language used in the opinions suggests a judgment debtor must pay the full amount of the judgment into court to toll postjudgment interest." Id. at 383.

The McGuire case suggests that the court would require the full amount of the judgment to be paid before interest would be tolled on any portion of the delinquent property taxes. Thus, it appears that the proper computation of interest following partial payment of delinquent property taxes may depend upon whether the delinquent taxes have become a judgment under operation of K.S.A. 1988 Supp. 79-2101. Prior to a judgment, it appears that the computation of interest should be made in accordance with the customary "United States" rule as in ordinary commercial transactions. Once there is a judgment on delinquent taxes, it may be necessary to compute interest on the full amount until the entire debt is paid.

Very truly yours,


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