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ATTORNEY GENERAL OPINION NO. 90- 110

Ed C. Rolfs, Secretary
Kansas Department of Revenue
Docking State Office Building
2nd Floor
Topeka, Kansas 66612

Re: Taxation--Motor Vehicles--Valuation and Computation
of Tax Amount

Statutes; Administrative Rules and Regulations and
Procedures--Rules and Regulations--Definitions

Synopsis: To eliminate the "alphabet inequity" which
currently results in determining motor vehicle
taxes, the department of revenue may, by
administrative rules and regulations, accelerate
the recognition of depreciation to January 1 when a
registration year spans a part of two calendar
years. Cited herein : K.S.A. 77-415; 77-422,
79-5102; 79-5105; 79-5115.

* * *

Dear Secretary Rolfs:

You request our opinion regarding whether your proposal to
eliminate the motor vehicle tax alphabet inequity can be
implemented without legislative change.

Your proposal is as follows:

"[W]e believe that the problem cited in your opinion [no
90-100] may be corrected by accelerating the recognition of

depreciation to January 1 when a registration year spans a part of two calendar years. For example, under the Department's proposal, a taxpayer who purchases a vehicle in December, 1990, would have one month of tax computed at the 1990 value and 11 months of tax computed at the 1991 value after the 16% depreciation has been taken into account. In the example cited in your opinion, the differences in tax paid by 'A' and 'T' under the Department's proposal would be de minimus. Schedules detailing the effects of the Department's proposal are attached."

In our opinion, implementation of this scheme is within the department's authority. K.S.A. 79-5102 authorizes the department to adopt rules and regulations setting forth a schedule for determining the value of all motor vehicles. Your proposal deals with the valuation of motor vehicles. Additionally, K.S.A. 79-5115 directs the secretary of revenue to adopt rules and regulations "as are necessary to administer and carry out the provisions of [the motor vehicle tax act]." K.S.A. 79-5105(a) requires the value of a motor vehicle to be reduced "if the model year of the motor vehicle is a year other than the year for which the tax is levied." For any given taxpayer, when a new calendar year is entered, the "year" or part of the year for which the tax is levied will be other than the model year, unless a model is purchased with a designated model year subsequent to the current year (i.e. a 1991 model is purchased in 1990). Thus, conceptually, we believe your proposal reasonably implements the provisions of the motor vehicle tax act and is within your authority to adopt. Of course, formal approval of any regulation is not possible until such time as we have had an opportunity to examine the specific language of that regulation.

You also ask whether the proposal in question may be implemented by way of revenue ruling or executive order of the Governor rather than by rule and regulation. I find no precedent for adopting such a scheme by executive order. Further, K.S.A. 77-415, defines a rule and regulation as "a standard, statement of policy or general order . . . of a general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency. . . ." The proposal in question falls squarely within this definition. K.S.A. 77-415 further provides:

"Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be

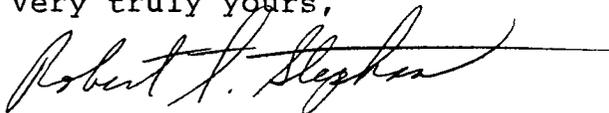
adopted by the state agency and filed as a rule and regulation as provided in this act."

It is therefore our opinion that the proposal must be implemented through rules and regulations rather than agency ruling.

You indicate that the policy may be implemented more quickly through agency ruling on executive order than through rules and regulations. As for the timing of implementing rules and regulations, K.S.A. 77-422(b) provides that rules and regulations adopted on a temporary basis to preserve the public peace, health, safety or welfare "may be adopted without the giving of notice and the holding of a hearing thereon." Such regulations may take effect immediately after approval by the secretary of administration, the attorney general and the state rules and regulations board. In our opinion the contemplated regulations are for the public welfare and may be adopted on a temporary basis. If a majority of a quorum of the board agrees that such rules may be adopted on a temporary basis, the rules may be in place quickly. Permanent regulations should be run simultaneously with the temporary regulations so that they will be in place and enforceable upon expiration of the temporary regulations.

In conclusion, the department of revenue may, by administrative rules and regulations, accelerate the recognition of depreciation to January 1 when a registration year spans a part of two calendar years, thereby eliminating the "alphabet inequity" which currently results in determining motor vehicle taxes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm