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ATTORNEY GENERAL OPINION NO. 2013-08

Linus A. Thuston
Neosho County Attorney
102 S. Lincoln, P.O. Box 370
Chanute, KS 66720

David S. Brake
Chanute City Attorney
101 W. Main St.
Chanute, KS 66720

Re: Cities and Municipalities—Buildings, Structures and Grounds—Downtown
Redevelopment Act; Taxation of Real Property Approved for Tax Benefits;
Rebate of Property Tax Increments to Taxpayers

Synopsis: For purposes of the Kansas Downtown Redevelopment Act, the “tax
increment” includes all additional real property taxes attributable to the
increase in value of the improved property, not just those additional taxes
that would have been paid to the city. Cited herein: K.S.A. 2012 Supp. 12-
17,121; 12-17,122; 12-17,123; 12-17,124; 12-17,125; 79-1439.

* * *

Dear Mr. Thuston and Mr. Brake:

As the Neosho County Attorney and Chanute City Attorney, respectively, you ask
whether the tax rebate payable to a property owner under the Kansas Downtown
Redevelopment Act¹ includes all additional property taxes generated by the increased
value of improved real property or only the portion of the additional taxes that would
have been paid to the city, as opposed to other taxing entities such as the school district
and county.

¹ K.S.A. 2012 Supp. 12-17,121 *et seq.*

Under the Kansas Downtown Redevelopment Act (“the Act”), the governing body of a city may apply to the Secretary of the Kansas Department of Commerce for the establishment of a downtown redevelopment area.² If the Secretary of Commerce approves the application,³ a property owner within the downtown redevelopment area may receive tax rebates by making an investment in improvements “the value of which is equivalent to or exceeds 25% of the appraised value of the property.”⁴

These tax rebates are based on the “tax increment generated by the improvement.”⁵ The Act defines “tax increment” as “all real property taxes assessed pursuant to K.S.A. 79-1439, and amendments thereto, to the amount of the current appraised value of the property in excess of the base year appraised value of the property located within a redevelopment area or proposed redevelopment area.”⁶ In other words, “tax increment” refers to the additional taxes attributable to the increase in value of the improved property.

You inform us that the City of Chanute has established a downtown redevelopment area in accordance with the Act. A property owner recently came forward after making the required improvements and was approved for tax rebates. However, you are unsure whether these rebates should consist of all increased real property taxes generated by the improvements or only the portion of the increased taxes that would have been paid to the city.

When interpreting statutes, we presume “that the legislature expressed its intent through the language of the statutory scheme.”⁷ If the language is plain and unambiguous, the statute should be interpreted as written. “Only when the language of a statute is unclear or ambiguous” is it appropriate to “move to the next analytical step, applying canons of construction or relying on legislative history to construe the statute.”⁸

The language of the Act is clear and unambiguous with respect to the question you ask. The Act provides that:

The tax increment generated by the improvement shall be credited to the fund created by a governing body . . . for the purpose of returning all or part of the property tax increment to the taxpayer in the form of a rebate of 100% each year in years one through five, 80% in year six, 60% in year seven, 40% in year eight and 20% in year nine. No rebate shall be paid on or after the tenth year.⁹

² K.S.A. 2012 Supp. 12-17,123(a). An unincorporated area of a county may also establish a downtown redevelopment area, but your question relates to cities.

³ The statutory criteria for approval are specified in K.S.A. 2012 Supp. 12-17,123(b).

⁴ K.S.A. 2012 Supp. 12-17,124(b).

⁵ K.S.A. 2012 Supp. 12-17,125.

⁶ K.S.A. 2012 Supp. 12-17,122(i).

⁷ *Unruh v. Purina Mills, LLC*, 289 Kan. 1185, 1193-94 (2009).

⁸ *Id.* at 1194.

⁹ K.S.A. 2012 Supp. 12-17,125.

This section clearly states that in years one through five, the entire “tax increment” is to be refunded to the property owner. The answer to your question, therefore, turns on the definition of “tax increment.”

As we previously noted, the Act defines “tax increment” to include “all real property taxes” generated by improvements to the property.¹⁰ In our opinion, the phrase “*all* real property taxes” cannot reasonably be interpreted as referring to only a *portion* of the additional property taxes, namely those that would have been paid to the city. To be sure, the “tax increment” only includes taxes “assessed pursuant to K.S.A. 79-1439, and amendments thereto.” But K.S.A. 2012 Supp. 79-1439 simply provides the method for calculating assessed valuation; it draws no distinction between property taxes payable to the city and property taxes payable to other government entities.

Accordingly, we opine that for purposes of the Kansas Downtown Redevelopment Act, the term “tax increment” includes all additional real property taxes attributable to the increase in value of the improved property. When a property owner has been approved for tax benefits under the Act, this tax increment should be returned to the property owner in the percentages specified by K.S.A. 2012 Supp. 12-17,125.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

DS:AA:DC:sb

¹⁰ K.S.A. 2012 Supp. 12-17,122(i); see also K.S.A. 2012 Supp. 12-17,122(g) (“‘real property taxes’ means all taxes levied on an ad valorem basis upon land and the improvements thereon”).