

STATE OF KANSAS

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Department of Revenue
Division of Property Valuation

DIRECTIVE # 92-009

TO: County Appraisers; Boards of County Commissioners

SUBJECT: Abatement of Tax Penalties Pursuant to (K.S.A. 79-332a, as amended by L. 1992, ch. 282, §2.K.S.A.79-1422 and K.S.A. 1991 Supp. 79-1427a)

This directive is adopted pursuant to the provisions of L. 1992, ch. 249, § 1, and shall be in force and effect from and after the Director's approval date.

The county appraiser shall impose all penalties prescribed by K.S.A. 79-332a, as amended by L. 1992, ch. 282, §2, K.S.A. 79-1422 and K.S.A. 1991 Supp. 79-1427a. County appraisers, county clerks and boards of county commissioners shall not abate such penalties.

K.S.A. 79-1422 provides in part that "[a]ny person required to file a statement listing property for assessment and taxation purposes who fails to make and file such statement on or before the date prescribed by K.S.A. 79-306, and amendments thereto, shall be subject to a penalty..." (Emphasis added.) The word "shall" imposes an affirmative obligation to which discretion does not apply {Banister v. Carnes, 9 Kan. App. 2d 133 (1983)}. Therefore, any county appraiser not adding the penalties prescribed by K.S.A. 79-1422 in the case of a late filing is in contravention of the provisions of the statute. K.S.A. 1991 Supp. 79-1404, *Third* states that it shall be the duty of the Director of Property Valuation to direct proceedings, action and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officers for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property.

Only the Board of Tax Appeals is authorized to abate any penalty imposed under the provisions of K.S.A. 79-1422(c), which provides:

The board of tax appeals shall have the authority to abate any penalty imposed under the provisions of [K.S.A. 79-1422] and order the refund of the abated penalty, whenever excusable neglect on the part of the person required to make and file the statement listing property for assessment and taxation is shown, or whenever the property for which a statement of assessment was not filed as required by law is repossessed, judicially or otherwise, by a secured creditor and such secured creditor pays the taxes and interest due.

Approved: November 3, 1992

David C. Cunningham
Director of Property Valuation