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December 13, 2013

ATTORNEY GENERAL OPINION NO. 2013- 22

Gary E. Thompson  
Linn County Counselor  
P.O. Box 184  
Mound City, KS 66056

Re: Taxation—Collection and Cancellation of Taxes—Protesting Payment of Taxes

Synopsis: The word “taxpayer” in K.S.A. 2013 Supp. 79-2005 refers to the property owner. An agent or attorney of the property owner may file a tax protest on the property owner’s behalf, but a third party who is not acting on behalf of the property owner is not a “taxpayer” eligible to protest the property owner’s taxes.

A tax protest may be filed at the time the taxes are paid, even if the taxes are delinquent. Taxpayers who pay at least part of their taxes by December 20 are not required to protest their taxes at the time of payment but may wait until December 20 (or January 31 if at least half of the taxes were paid by an escrow or tax service agent). In addition, taxpayers who pay only part of their taxes by December 20 may file a protest at the time of paying the remaining taxes, as long as they did not protest the first half of the taxes.

When the basis of a tax protest is a challenge to the valuation or assessment of the property, the county appraiser is responsible for determining whether the protest was timely filed and whether the person who filed the protest was authorized to do so. Cited herein: K.S.A. 2013 Supp. 79-2004; 79-2004a; 79-2005.

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Dear Mr. Thompson:

As the County Counselor for Linn County, you ask the following questions about the payment of property taxes under protest:

- 1) If a third party pays another person's property taxes, is that third party a "taxpayer" who may protest the taxes, or does the word "taxpayer" in K.S.A. 2013 Supp. 79-2005 refer exclusively to the property owner?
- 2) When may a protest of taxes pursuant to K.S.A. 2013 Supp. 79-2005 be filed? Is there a time after which a protest may not be filed?
- 3) If a person who files a tax protest is not eligible to do so, or if a protest is filed too late, which county official is responsible for making that determination and notifying the protestor?

We will consider your questions in turn.

#### Definition of "Taxpayer"

K.S.A. 2013 Supp. 79-2005 provides a procedure by which a "taxpayer" may protest the payment of that taxpayer's property taxes. You inform us that in Linn County, a person recently paid a corporation's delinquent property taxes, and there is no evidence that this third party was acting on behalf of the corporation. At the time of paying the taxes, this third party also filed a protest of the taxes, claiming that the valuation of the property should be reassessed. You inquire whether this third party is a "taxpayer" eligible to file a tax protest.

The term "taxpayer" is not defined in K.S.A. 2013 Supp. 79-2005. Two common dictionary definitions are "one that pays or is liable for a tax"<sup>1</sup> and "one who pays or is subject to a tax."<sup>2</sup> The first part of these definitions suggests that whoever pays property taxes is a "taxpayer," while the second part indicates that the word refers to the property owner, *i.e.* the person "liable for" or "subject to" the tax. Standing alone, therefore, these definitions do not answer your question.

But we believe the statutory context here resolves any ambiguity about the meaning of the word "taxpayer."<sup>3</sup> K.S.A. 2013 Supp. 79-2005(a) states that when the basis of the protest is an illegal assessment or valuation, "[t]he county appraiser shall review the appraisal of *the taxpayer's property* with the taxpayer or such taxpayer's agent or attorney . . . ."<sup>4</sup> Similarly, subsection (b) of the statute provides that its provisions shall

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<sup>1</sup> "Taxpayer." *Merriam-Webster.com*. <http://www.merriam-webster.com/dictionary/taxpayer> (accessed November 25, 2013).

<sup>2</sup> "Taxpayer." *Black's Law Dictionary* (9th ed. 2009).

<sup>3</sup> A rule of statutory interpretation requires that words be construed according to their context. See K.S.A. 77-201, *Second*.

<sup>4</sup> Emphasis added.

not “prevent any taxpayer from protesting taxes when the valuation or assessment of *such taxpayer’s property* has been changed pursuant to an order of the director of property valuation.”<sup>5</sup> The statute’s use of the term “taxpayer’s property” in both of these instances demonstrates that the word “taxpayer” means the property owner.

Of course, property owners may act through agents or attorneys, as K.S.A. 2013 Supp. 79-2005(a) explicitly recognizes, and so these individuals may file a protest on behalf of the property owner. But in our opinion, a third party who is not acting on behalf of the property owner is not a “taxpayer” eligible to protest the property owner’s taxes.

#### Time for Filing a Tax Protest

You next ask when a tax protest must be filed. This issue is addressed by K.S.A. 2013 Supp. 79-2005(a), which provides:

Any taxpayer, before protesting the payment of such taxpayer’s taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no later than December 20, or, with respect to taxes paid in whole or in part in an amount equal to at least ½ of such taxes on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state court of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes.

December 20 is the date property taxes are initially due under K.S.A. 2013 Supp. 79-2004 (real property taxes) and 79-2004a (personal property taxes). With a few exceptions, these statutes give taxpayers the option of paying all of their property taxes by December 20, or half of the taxes by December 20 and the remaining half by May 10 of the next year.

A few things are clear from the plain language of K.S.A. 2013 Supp. 79-2005. If a taxpayer is delinquent and pays no taxes by December 20, the taxpayer must file the protest at the time of paying taxes. Also, if a taxpayer pays the entire amount of taxes by December 20, the protest must be filed no later than December 20 (or January 31 if the taxes were paid by an escrow or tax service agent).

But there is some ambiguity about taxpayers who pay part, but not all, of their taxes by December 20. This includes taxpayers who pay half of their taxes by December 20 and the remainder by May 10 of the next year, as authorized by K.S.A. 2013 Supp. 79-2004 and 79-2004a. Under one interpretation of the statute, taxpayers who pay part of their taxes by December 20 must file any protest no later than December 20 (or January 31 in the case of an escrow or tax service agent) and may never file a protest at the time of

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<sup>5</sup> Emphasis added.

paying their remaining taxes after these dates. This interpretation reads the phrase “either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no later than December 20” as creating two mutually exclusive deadlines to file a protest.

We read the statute somewhat differently. In our opinion, the “either . . . or” framework gives taxpayers a choice. Taxpayers who pay part of their taxes before the December 20 deadline are not required to file a protest at the time of payment but may wait until December 20, when the first half of their taxes would have been due. But these taxpayers may also file a protest at the time of paying their remaining taxes, even after December 20, unless they already protested the first half of their taxes.<sup>6</sup> Under our interpretation, the phrase “if the whole or part of the taxes are paid prior to December 20” limits the option of filing a protest by December 20 to taxpayers who pay at least part of their taxes by then (so someone cannot file a protest before paying any taxes), but does not prohibit these taxpayers from utilizing the first option — filing a protest at the time of payment.

Our interpretation finds support in subsection (b) of the statute, which provides that “the second half payment of taxes [shall not] be protested when the first half payment of taxes has been protested.” This suggests that taxpayers who do not protest the first half of their taxes may, at least some of the time, protest the second half. If the alternate interpretation were correct and subsection (a) of the statute requires any protest to be filed by December 20 whenever part of the taxes are paid by then, the second half of taxes could *never* be protested, and this provision in subsection (b) would be redundant. And a canon of statutory construction dictates that a statute should not be interpreted “in such a way that part of it becomes meaningless, useless, or surplusage.”<sup>7</sup>

In addition, the other interpretation of the statute would produce unreasonable results. Taxpayers who took advantage of the option of paying only half of their taxes by December 20 would be forbidden from filing a tax protest when paying the second half by May 10, but taxpayers who failed to pay the first half of their taxes on time could protest those taxes whenever they got around to paying them. We think it unlikely the legislature intended to confer greater rights on delinquent taxpayers than on those who comply with the statutory deadlines.

For these reasons, we interpret K.S.A. 2013 Supp. 79-2005 as allowing a taxpayer to file a protest any time property taxes are paid, as long as the taxpayer did not already protest the first half of the taxes. In addition, taxpayers who pay at least part of their taxes before December 20 are not required to file a protest at the time of paying but may wait until December 20, or until January 31 of the next year if the first half of the taxes were paid by an escrow or tax service agent.

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<sup>6</sup> See K.S.A. 79-2005(b) (“nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested”).

<sup>7</sup> See, e.g., *States v. Sedillos*, 279 Kan. 777, 783-84 (2005).

County Official Responsible for Determination

Finally, you ask which county official is responsible for determining whether a person is eligible to file a tax protest and whether a protest has been filed in a timely manner. You state that the Linn County Treasurer believes the County Appraiser is responsible, while the County Appraiser believes this duty rests with the County Treasurer.

Although K.S.A. 2013 Supp. 79-2005 does not explicitly answer your question, we believe the procedures laid out in that statute indicate that county appraisers are responsible for making these determinations when the basis of the protest is a challenge to the valuation or assessment of the property. Subsection (a) of this statute provides:

When the grounds of [a tax] protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting.

The role of the county treasurer under this statute is simply to forward the tax protest (required by statute to be filed with the county treasurer) to the county appraiser, while the county appraiser is responsible for making a decision on the merits of the protest. Because the statute gives the decision-making authority to the county appraiser, we believe the county appraiser should also be responsible for determining whether the person is eligible to file a protest and whether the protest was timely filed.

Further supporting our opinion, K.S.A. 2013 Supp. 79-2005 provides a process by which an aggrieved taxpayer may seek review of a *county appraiser's* decision — under subsection (g), the taxpayer may appeal the decision to the State Court of Tax Appeals (COTA) within 30 days — but provides no mechanism by which a person may seek review of a decision by the *county treasurer*. This indicates that the county appraiser should determine whether the person is eligible to file a protest and whether the protest was timely filed. That way, if the person disagrees with the county appraiser's findings on either of these points, the person can appeal the decision to COTA.

Gary Thompson  
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Sincerely,

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