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Division of Property Valuation

MEMORANDUM

TO: County Appraisers and County Clerks

FROM: Mark Beck, Director

DATE: December 6, 1999

SUBJECT: 1999 Change in the Law – Clerical Errors

The 1999 legislature Senate Bill 11 amended the clerical error statutes during the 1999 Legislative Session. (1999 Kansas Session Laws, chapter 123, pages 771-73). Below is a brief summary of the change in the law, followed by an in-depth discussion of the law as it exists today.

Summary:

The law was revised to reinforce the fact that clerical errors are ministerial-type errors that do not involve judgment or discretion. Former paragraph (b) in K.S.A. 79-1701 was stricken. And, the term “mistake” was replaced by the term “*mathematical miscomputation*” in terms of correctable overstatements and understatement of value or taxes made by the county. There is no court case on point defining *mathematical miscomputation*; however, unrelated cases define the term narrowly. The board of tax appeals and/or the courts will ultimately define this term. We will keep you apprised of new developments.

The law was also revised to clarify, limit and streamline the tax grievance process as follows:

- (1) The board of tax appeals may only address those errors listed in K.S.A. 79-1701;
- (2) The board of tax appeals may only review those tax grievances that are filed within four years from the date the tax would have become a lien on real property (November 1st); and
- (3) It is no longer necessary for a county board of commission to approve the board of tax appeals’ decision to order a refund for years more than 3 years prior to the current tax year.

Following is an in-depth discussion of the current law pertaining to clerical errors.

Clerical errors defined – authority of county clerk to correct:

K.S.A. 79-1701 now provides that the county clerk may correct the following clerical errors prior to November 1:

- (a) Errors in the description or quantity of real estate listed;
- (b) Errors which have caused improvements to be assessed upon real property when no such improvements are in existence;
- (c) Errors whereby improvements located upon one tract or lot of real estate have been assessed as being upon another tract or lot;
- (d) Errors whereby taxes have been charged upon property which the state board of tax appeals has specifically declared to be exempt from taxation under the constitution or laws of the state;
- (e) Errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county;
- (f) Errors whereby the assessment of either real or personal property has been assigned to a taxing district in which the property did not have its taxable situs; and
- (g) Errors whereby the values or taxes are understated or overstated as a result of a *mathematical miscomputation* on the part of the county.

Formerly, a paragraph existed allowing the county to correct “*errors in extensions of values or taxes whereby a taxpayer is charged with unjust taxes.*” This paragraph was stricken in recognition of the fact that today, most systems are computerized and the need for a paragraph dealing with the manual computation of taxes: (1) is no longer necessary; and (2) tends to cause confusion. The last paragraph was revised to replace the term “mistake” with the narrower term “*mathematical miscomputation.*”

Clerical errors—authority of board of county commissioners to correct:

K.S.A. 79-1701a allows the board of county commissioners to correct clerical errors for the current year (November 1st through December 31st) and the two prior years. The county commissioners may correct those clerical errors listed above and in K.S.A. 79-1701. K.S.A. 79-1701a was also revised in 1999 to allow the county to correct errors resulting in an *understatement* of tax when the county makes a *mathematical miscomputation* (rather than a mistake).

Clerical errors—authority of board of tax appeals to correct:

K.S.A. 79-1702 allows the board of tax appeals to address grievances filed by taxpayers, municipalities or taxing districts. The tax grievance must be one described in K.S.A. 79-1701 or K.S.A. 79-1701a. The tax grievance must be filed within four years from the date the tax would have become a lien on real property (November 1st). The provisions requiring that the board of county commissioners also approve any refund for more than three years prior to the most recent tax year were eliminated in 1999. The board of tax appeals may order an additional assessment or tax bill or both where an error results in an *understatement* of values or taxes as a result of a *mathematical miscomputation* (rather than mistake) on the part of the county.

What is a clerical error?

For Kansas property tax purposes, the term “clerical error” is defined by referring to the list of items set forth in K.S.A. 79-1701. The Kansas Supreme Court, when interpreting K.S.A. 79-1701, has noted that clerical errors involve errors where discretion is not involved. *In re Application of U.S.D. No. 437 for Tax Relief*, 243 Kan 555, 558, 757 P.2d 314 (1988).

In the *U.S.D. No. 437* case, property assigned to the wrong tax district was viewed as a clerical error since the task did not entail exercising discretion, but rather just matching the location to the property to the correct geographical district on the tax map.

What is a mathematical miscomputation?

In 1999, the legislature replaced the term “mistake” used in the clerical error statutes with the apparently more narrow term, “mathematical miscomputation.” There is no case on point; we simply do not yet know how the board of tax appeals or a court will construe “mathematical miscomputation.” The term will be of interest to both taxpayers seeking relief from overstatements of tax or value, and counties seeking relief from understatements of tax or value.

At times, the courts will refer to the dictionary to interpret a term in the statutes. According to WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY, “mathematical” means:

1. Of or relating to mathematics.
2. Precise: exact.
3. Absolute: certain.

The term “computation” means:

1. The act or process of computing.
2. A method of computing.
2. The result of computing.
3. The act of operating a computer.

There are some cases that are helpful, but not binding. There is a Kansas case dealing with voting laws which defines the term “mathematical” as meaning “theoretically precise,” and the term “precise” as “having determinate limitations.” These definitions were taken from the dictionary.

There are also a string of federal cases interpreting the term “mathematical error” for income tax purposes. In these cases, the term is construed very strictly, because when a mathematical error occurs on the face of an income tax return, the I.R.S. simply sends a taxpayer notice of taxes due and the taxpayer is not afforded any appeal rights. In these cases, the courts have found that a mathematical error is strictly an error in arithmetic, over which there could be no dispute. *See, e.g., Repetti v. Jamison*, 131 F.Supp. 626, 628 (1955)(motion for reconsideration denied). In the *Repetti* case, a taxpayer claimed a credit for a year beyond the statutory period allowed. The court held that the error was not a mathematical error.

We will keep you apprised of any noteworthy new developments. If your county has a case that you believe would be of interest to other counties, please contact this division.