November 2, 2012

**Mill Rate Higher Than Mill Rate Adopted**

Question: Good afternoon.  I have a question that I would like your help answering.  I would like to make sure we interpret the budget statutes and budget manual correctly to comply with Kansas Law.

If a reduction in valuation caused the mill levy rate to exceed the mill levy rate estimated during the budget process prior to August 25, is there any action that the government can take to reset mill levy rates?  For example:  the 2010 mill levy was adopted at 70 mills and final assessed valuation results in the mill levy being set at 75 mills.

Answer: First, we need to look at KSA 79-2930(a) to determine what amounts in the budget are being adopted.  The statute provides:

Two copies of the budget certificate giving the amount of ad valorem tax to be levied and the total amount of the adopted budget of expenditures by fund . . . shall be presented to the county clerk within the time prescribed by K.S.A. 79-1801 and amendments thereto.”

The governing body in adopting the budget and certifying the adopted budget to the County Clerk is limiting the amount of ad valorem tax to be levied and of expenditures by fund. From there the determining factor as to mill rate is the amount of final total assessed valuation. So, the governing body is not adopting the mill rates, but rather the governing body determines what it needs in ad valorem tax dollars to help fund that budget.

Once the budget has been filed the County Clerk sets the levy rate, which itself is a mathematical computation based upon (1) the amount of ad valorem tax dollars requested and (2) the amount of final total assessed valuation.

Now, to your question of what might be done to amend your budget to reduce the mill rate? KSA 79-2929a(b) states:

Whenever a clerical error in the calculation of the assessed valuation of any taxing subdivision or municipality . . . is discovered after the governing body has adopted the budget and prior to October 1, the governing body may amend such budget.

Here, the statute allows for amendment of an adopted budget, and before the budget year starts, if clerical error has occurred and such is discovered prior to October 1. If this is the situation you face then authority does exist for the governing body to amend its budget and, in effect, knock its mill rate down to where it was at when the budget was first adopted utilizing the preliminary total assessed valuation number.

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Question: Attached find the publication for the USD and the calculated mill levies. Thank you for the guidance on this issue. Any input will be appreciated.

I double checked all the values for the school district this morning. Thanks again.

Answer: Good morning. We are unable to read (even when enlarged) the publication that was sent to us. We also tried to pull the publication from the USD's website, but could not read that copy either.

However, assuming that the notice of hearing found on the USD's website was published correctly (those numbers match the numbers on the certification page you marked up), we don't see an issue with the reduced mill levies. The publication informs taxpayers of the maximum dollar amount to be levied by fund. As long as the final levy (again by fund) results in tax levy *dollars* equal to or less than what was published, the budget should be good to go without need of another hearing by the USD.

As the county clerk you do have a duty to reduce a levy when there is a statutory or legal mill levy restriction by fund, and that is what you did in this case. Your office reduced the general fund mill levy to 20 mills in accordance with state law, and limited the capital outlay to eight mills (which we believe was established by local resolution).

We see no problem with the actions taken, and do not believe the governing body of the USD needs to hold another hearing for the reduction of tax dollars levied. However, we would strongly recommend that your office notify the USD about the amount of reduced tax dollars to the general fund and capital outlay fund.

Hope this information helps.

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Question: If our total county valuation drops from the July 1 estimate how do we calculate the correct levy?  If I am correct in my thinking, we can’t go over the published levy, correct?  So when we are calculating that final levy with a lower valuation that would increase the estimated levy.  How do we make this work?

We’ve had several big abatements in Real Estate this year and I’m not sure that the new personal property certification will offset those abatements.   I just want to make sure that I’m doing this correctly and not setting an incorrect levy.

Thanks for your help.

Answer: Municipalities prepare a budget to inform the public as to what their spending needs will be, along with the amount of ad valorem taxes that will be required to meet those spending needs. Utilizing the preliminary estimate of total assessed valuation allows for completion of the proposed budget, including the *estimated* mill rates based upon *estimated* total assessed valuation, and to pass this information on to the public with publication of the summary budget in the local newspaper.

Once the budget is adopted by the governing body it is passed along to you to compute the *actual* mill levy rates based upon (1) the final total assessed valuation, and (2) the ad valorem tax dollars requested by the municipality.

You are correct that under K.S.A. 79-2930 you should not set a levy that will generate more in ad valorem tax dollars than what was originally published. But, in this instance you should not be comparing mill rates; you should be comparing how much – in tax dollars per fund – was published vs. how much – in tax dollars per fund – is represented in the adopted budget. The statute makes no mention of mill rates and does not prohibit you from setting a levy that is higher than the total mill rate published.

As you note, your county’s final total assessed valuation is less than where it was when the budget was put together and published. The budget was adopted and the amount in tax dollars needed to fund it remained the same as what was published. Let’s use your numbers to examine what that does to your total mill rate:

July valuation *estimate* at $35,234,980 with requested ad valorem taxes of $325,198; the *estimated* total mill rate is 9.23

Final total assessed valuation drops to $33,980,657; requested ad valorem taxes stay the same at $325,198; the total mill rate is be 9.57

As you can see, regardless of the mill rate your county stands to receive the same amount in ad valorem tax dollars ($325,198). The higher mill rate is simply a result of there being less total valuation from which to levy the tax dollars needed to fund the budget.

We hope this helps.

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