**Opinion Letter**

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| **Letter Number:** | **O-1999-09** |

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| **Tax Type:** | **Homestead Property Tax Refunds** |
| **Brief Description:** | **Power of Attorney for Homestead Certificate of Eligibility.** |
| **Keywords:** |  |
| **Approval Date:** | **03/04/1999** |

**Body:**

Office of Policy & Research

March 4, 1999

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Re: Power of Attorney For Homestead Certificate of Eligibility

Dear Ms. XXXXX

Your correspondence of January 8, 1999, has been referred to my attention. Its contents are duly noted. Your letter states, in pertinent part, as follows:

The number of Homestead certificates processed in December 1998 was substantially higher than in December 1997. We anticipate this trend will continue.

Since we require the Homestead taxpayer to sign the Certificate of Eligibility in our presence, this creates a problem for homebound elderly or disabled citizens.

If you would approve our use of this limited power-of-attorney form, it would help us provide better service to our Homestead-eligible taxpayers.

The use of Certificates of Eligibility is controlled by K.S.A. 79-4521. The statute provides as follows:

**79-4521. Assignment of refund claim in lieu of payment of taxes; application for certificate of eligibility; duties of county officials; state payment to counties; payment of taxes in excess of claim.** (a) Beginning in 1992 and in each succeeding year, any person who owns a homestead, as defined by K.S.A. 79-4502, and amendments thereto, and who will be entitled to claim a refund of property taxes under the provisions of article 45 of chapter 79 of the Kansas Statutes Annotated, may make application to the county clerk of the county in which the homestead is located for a certificate of eligibility for such refund and present such certificate to the county treasurer on or before the time prescribed for the payment of the first half of taxes levied on such homestead in the current year in lieu of paying that portion of such taxes which equals the amount of the homestead property tax refund received by the claimant for taxes levied in the preceding year up to the amount of the first half of the property taxes due. Any person making an application shall present such proof as to eligibility for the refund as prescribed in rules and regulations adopted by the secretary of revenue. If the county clerk is satisfied that such person will be eligible for a refund, the county clerk shall make out a certificate of eligibility for such person on a form prescribed by the secretary of revenue. The certificate shall be signed by the county clerk and the person making application therefor. An eligible applicant shall also assign, in a space provided on the certificate, the refund to the county to pay the taxes on the applicant's homestead for the year in which such application is made.
(b) The county treasurer shall send daily a copy of each certificate of eligibility to the director of taxation. After receiving a claim of any claimant who has obtained a certificate of eligibility under this section, the director shall examine the same, and if the claim is valid, the director of accounts and reports shall draw a warrant in favor of the county in which claimant's homestead is located upon a voucher approved by the director of taxation in the amount of the allowable claim for refund. Sufficient information to identify the claimant shall be directed to the county treasurer with each warrant. Any taxes levied in any year on the homestead of any claimant who has obtained the certificate of eligibility herein provided for in excess of the amount paid to the county by the state and by the claimant on or before December 20 of such year shall be paid by the claimant on or before June 20 of the succeeding year. (Emphasis added.)

Your letter notes that you require the Homestead taxpayer to sign the Certificate of Eligibility in your presence. The statute, however, does not impose such a requirement. As a result, the use of a power-of-attorney form appears to be unnecessary, and we therefore must decline to approve its use.

Though not the response for which you hoped, I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 03/23/1999 Date Modified: 10/10/2001**