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No. 114,827

IN THE SUPREME COURT OF THE STATE OF KANSAS

BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, et el.

Petitioners,

v.

NICK JORDAN, in his official capacity as Secretary of the Department of Revenue

and

DAVID N. HARPER, in his official capacity as Director of Property Valuation, Department of Revenue

Respondents.

BRIEF OF RESPONDENTS

ORIGINAL ACTION IN MANDAMUS

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STATEMENT OF THE ISSUES

1. Is an original action in mandamus proper when Respondents have not failed to perform any clearly defined duty and when Petitioners have failed to make the required showing that relief is unavailable in the District Court?

2. Do the Petitioners have standing to bring this action in mandamus as a means of obtaining a declaratory judgment regarding the constitutionality of a duly-enacted statute effective July 1, 2014, when the Petition fails to allege that they have suffered any concrete and particularized injury as a result of the challenged law?

3. Assuming jurisdiction to decide the matter, have Petitioners met their heavy burden of demonstrating that K.S.A. 2014 Supp. 79-1460 violates Article 11, § 1, of the Kansas Constitution under the highly deferential rational basis test, particularly given the extensive legislative history demonstrating such a basis and the high degree of deference accorded to the Legislature regarding taxation?

NATURE OF THE MATTER BEFORE THE COURT AND STATEMENT OF FACTS

Imagine that you are a taxpayer who has undergone the burden, including considerable time and expense, of challenging the county appraiser's valuation of your home and, through the appeals process, obtained a reduction in appraised value from $150,000 to $135,000. Ultimately, after a possible lengthy appeals process, the county appraiser, small claims hearing officer, or the Board of Tax Appeals eventually agreed with you that the county had in fact initially overvalued your property. Then *the very next year*, you receive notice that the county is once again appraising your same property at $150,000. To say that you would be unhappy is probably an understatement.

Accordingly, taxpayer concerns led to enactment of a 1992 law providing that the county appraiser could not increase the property value for those properties where the taxpayer had succeeded on an appeal in the preceding year except for demonstrated substantial and compelling reasons. *See* 1992 Kan. Sess. Laws ch. 282, § 4 (amending K.S.A. 1991 Supp. 79-1460). That has been the law in Kansas for 23 years now. No one has challenged it as violating Article 11, § 1.

In 2014, criticisms of the tax appeals process led to a number of changes to the powers, duties and functions of the Board of Tax Appeals and to changes to statutes governing the appraisal process and valuation appeals process. *See* 2014 House Substitute for Senate Bill No. 231; 2014 Kan. Sess. Laws ch. 141. Among other things, the legislation included an expansion of the one-year period in K.S.A. 79-1460 to two years. 2014 Kan. Sess Laws ch. 141, § 11(a). The amendment also offered a definition of the term "substantial and compelling reasons," which had not been previously defined in the statute:

> (c) For purposes of this section:
>
> (1) The term ''substantial and compelling reasons'' means a change in the character of the use of the property or a substantial addition or improvement to the property;
>
> (2) the term ''substantial addition or improvement to the property'' means the construction of any new structures or improvements on the property or the renovation of any existing structures or improvements on the property. The term ''substantial addition or improvement to the property'' shall not include:
>
> (A) Any maintenance or repair of any existing structures, equipment or improvements on the property; or
>
> (B) reconstruction or replacement of any existing equipment or components of any existing structures or improvements on the property.

Id. at § 11(c). The amended law took effect on July 1, 2014.

Within the Department of Revenue, there is a Division of Property Valuation ("PVD") headed by the Director of Property Valuation. *See* K.S.A. 79-1401, *et seq.* David Harper is the current Director of Property Valuation. Among other duties, the Director of Property Valuation has the power and authority to "exercise general supervision over the administration of the assessment and tax laws of the state, over the county and district appraisers, boards of county commissioners, county boards of equalization, and all other boards of levy and assessment, to the end that all assessments of property, real, personal, and mixed, be made *relatively* just and uniform and at is true and full cash market value. . .." K.S.A. 79-1404, *First* (emphasis added). The Director of Property Valuation also has the power and authority to "*confer with, advise and direct county and district appraisers,* boards of commissioners, boards of equalization and others obligated under the law to make levies and assessments, *as to their duties under the statutes of the state*." K.S.A. 79-1404, *Second* (emphasis added).

On May 16, 2014, pursuant to his statutory responsibilities as PVD Director stated above, Director Harper approved Directive #14-047, which primarily addressed conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). But the Directive also instructed in part that:

> When the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process the county appraiser shall comply with K.S.A. 79-1460. This requirement is a jurisdictional exception when it prevents the value of a parcel from increasing to the value as indicated by the mass appraisal process.

See Appendix Exhibit 1, Directive #14-047 at 4.

Now—well over a year after K.S.A. 2014 Supp. 79-1460 took effect and more

than 23 years after this concept first appeared in Kansas law in 1992 and has remained unchallenged—several counties filed this original action in this Court, utilizing the extraordinary remedy of mandamus against the PVD Director and the Secretary of Revenue who are simply following duly-enacted law, arguing that K.S.A. 2014 Supp. 79-1460 violates the "uniform and equal" provision of Article 11, § 1, of the Kansas Constitution.

ARGUMENTS AND AUTHORITIES

Brief Summary Of Argument

An original writ of mandamus is procedurally improper where, as here, Respondents Secretary Jordan and PVD Director Harper have not failed to perform any clearly defined duty and adequate relief is available, if at all, in the district court. In addition, the Petitioners lack standing to bring this action because they have not suffered any concrete and particularized injury for what is essentially an advisory opinion in this instance.

Even if considered on the merits, Petitioners have failed to meet their heavy burden of overcoming the statute's presumption of constitutionality under the highly deferential rational basis test under which tax legislation in particular is reviewed. While acknowledging that rational basis review applies, Petitioners seem to conflate rational basis review with a form of heightened scrutiny and ask this Court to second-guess the reasonable policy judgments of the Legislature. This the Court cannot and should not do.

I. An Original Action In Mandamus Is Procedurally Inappropriate.

This Court should decline to exercise its original jurisdiction over this petition for mandamus because the Secretary of Revenue and PVD Director Harper have not violated

any clearly defined duty, but rather are merely following the law as duly-enacted by the Legislature. Further, Petitioners have failed to show as required by Kan. Sup. Ct. R. 9.01(b), that adequate relief for what appears to be a declaratory judgment action is not available in the district court.

In *Arney v. Director, Kansas State Penitentiary*, 234 Kan. 257, 671 P.2d 559 (1983), this Court explained:

> [M]andamus is available only for the purpose of compelling the performance of a clearly defined duty; that its purpose is to require one to whom the writ or order is issued to perform some act which the law specifically enjoins as a duty resulting from an office, trust, or station; that mandamus may not be invoked to control discretion and neither does it lie to enforce a right which is in substantial dispute, and further, that resort to the remedy may be had only when the party invoking it is clearly entitled to the order which he seeks.

Id. at 260-61 (quoting *Lauber v. Fireman's Relief Ass'n of Salina*, 195 Kan. 126, 128-29, 402 P.2d 817 (1965). "Absent illegal, arbitrary or unreasonable action, mandamus is not a proper remedy." *Id.* at 266; *see also National Education Ass'n-Topeka, Inc. v. U.S.D. 501, Shawnee County*, 225 Kan. 445, 455, 592 P.2d 93 (1970) ("Absent a finding that the Board was violating an alleged duty, there was no basis to support the order of mandamus."). Mandamus does not lie to interfere with public officials performing their duty, as "to hold otherwise would create chaos," *State ex rel. Miller v. Rohleder*, 208 Kan. 193, 490 P.3d 374 (1971), particularly in the sensitive area of taxation.

Here, there is no allegation whatsoever that Secretary of Revenue Nick Jordan has violated clearly defined legal duty; rather, the sole allegation regarding him is that he appointed PVD Director David N. Harper as per statute. Pet., at ¶ 1. The Petition does not allege that there was anything unlawful about the appointment itself. Appointment of

an official is not a basis for mandamus, at least not in these circumstances. The Petition fails to state any claim against Secretary Jordan.

As to PVD Director David N. Harper, it is similarly undisputed that he is simply following the duly enacted law as written. Pet., at ¶¶ 2, 13-14. The challenged PVD Directive, Appendix Exhibit 1, merely instructs county appraisers to comply with the statute, which is presumed to be constitutional. As the Petition recognizes, Director Harper's statutory duties include "exercis[ing] general supervision over the administration of the assessment and tax laws of the state, over the county and district appraisers, boards of county commissioners and all other boards . . . to the end that all assessment of property, real, personal and mixed, be made relatively just and uniform . . . ," Pet., at ¶ 2 (citing K.S.A. 79-1404 *First*), and "adopt[ing] rules and regulations or appraiser directives prescribing appropriate standards for the performance of appraisals in connection with *ad valorem* taxation in this state. . . ." Pet., at ¶ 2 (citing K.S.A. 79-505). By their own admission, Director Harper has done precisely as the statute commands. Pet., at ¶¶ 13-14. There is no failure to perform a clearly defined duty. At minimum, the asserted right is in "substantial dispute," *see Arney*, 234 Kan. at 260-61, as shown by the discussion of the merits below, and therefore inappropriate for mandamus.

What the Counties want is for this Court to issue a declaratory judgment or an advisory opinion regarding the constitutionality of a statute. Pet., at ¶ 15 ("Petitioners seek an authoritative interpretation of K.S.A. 79-1460 as amended for the guidance of public officials in their administration of the public business . . . to provide guidance to the various county and district appraisers located throughout the state."). But as this Court explained in *Long v. Board of County Comm'rs of County of Wyandotte*, 254 Kan.

207, 864 P.2d 724 (1993), a mandamus action brought by a sheriff against a board of county commissioners:

> Courts will not accept jurisdiction of a mandamus action simply to give guidance to a public official or to settle disputes between public officials. It is only where an issue of law affects public officials, presents an issue of great public importance and significant state interest, and requires a speedy adjudication that mandamus is an appropriate and proper means to decide the issue.

Id. at 212. Mandamus is not available simply as a means of obtaining a declaratory judgment otherwise available in the district court under K.S.A. 60-1701, *et seq.*

Similarly, Kansas Supreme Court Rule 9.01(b) provides that an "appellate court ordinarily will not exercise original jurisdiction if adequate relief appears to be available in the district court." This principle was applied by this Court in dismissing a similar challenge to motor vehicle tax statutes, originally brought as a class action in mandamus by taxpayers as stated in *Dean v. State*, 250 Kan. 417, 419, 826 P.2d 1372 (1992). This Court dismissed that original action under Supreme Court Rule 9.01 because declaratory and injunctive relief was available in the district court provided that applicable administrative remedies were exhausted. *See id.* at 419, 427-28.

The allegations of the Petition fail to meet the criteria stated in Kan. Sup. Ct. R. 9.01(b) and in *Long*. The Petition fails to demonstrate that this is an issue of great public importance and significant state interest, containing only vague, conclusory allegations in this regard. In particular, the effect of the 2014 amendment is limited to only those taxpayers who have appealed their property valuations *and* have succeeded in the appeals process in having those values reduced—which Petitioners concede is a "select, small group of taxpayers." Memorandum of Points and Authorities in Support of Petition ("Pet. Mem."), at final paragraph [unnumbered page 12]. Petitioners admit that even as to one

county, Johnson, "[t]he fact is that very few taxpayers appeal their property values at all, let alone each year." Pet. Mem., at 10 [unnumbered]. By their own admission, the effect of the law is not significant.

It is also unclear what the claimed time urgency is in this matter. To the extent that Petitioners claim they need a speedy determination, it is an issue of their own creation, based upon their own delay. By their own admission, this statute became effective July 1, 2014. They have been on notice since then and even prior to that as the Legislative History shows, they were actively involved in this process before the Legislature. Yet they waited well over a year until November 30, 2015, to bring this action, claiming they need an expedited determination. If this is now an emergency, it is one of their own making. As with all equitable devices, "[e]quity aids the vigilant." *See, e.g.*, *Dunn v. Dunn*, 47 Kan. App. 2d 619, 630, 281 P.3d 540 (2012) (quoting *Rex v. Warner*, 183 Kan. 763, 332 P.2d 572 (1959)). This Court should not reward Petitioners for their delay.

Finally, an original action is inappropriate because there are disputed issues of fact. Although fact finding is unnecessary to uphold the challenged law under rational basis review, the Counties ask this Court to scrutinize the Legislature's actual and presumed factual findings and the effect of the statute as amended in 2014. But the Petition itself provides no "documentary evidence" as required by Kan. Sup. Ct. R. 9.01(a), or other evidence. Respondents object to Petitioner's Appendices A and C as they are not submitted in such a form as to be admissible in evidence provided that they had any relevance to this matter, which is also unclear.

The statute as amended provides only for a two-year, as opposed to the long-standing one-year, 'freeze' subject to the appraiser's showing of substantial and

compelling reasons which, one might imagine, will also involve additional factual development and may in fact vary from county to county. It is unknown precisely how many taxpayers are involved, their percentage relative to the overall population, how much valuation was reduced, or the numerous other factors that may be relevant if this Court accepts Petitioners' invitation to second-guess the Legislature's judgment. Indeed, if any property owner were to appeal the valuation of his or her home claiming a violation of Article 11, Section 1, additional factual development would be required to assess the merits of the claim. *See, e.g.*, *Marriott Corp. v Board of County Comm'rs of Johnson County,* 25 Kan. App. 2d 840, 847-48, 972 P.2d 793 (1999) (remanding the matter to BOTA for a factual determination regarding Marriott's argument on uniform and equal taxation).

Mandamus does not lie where there are disputed issues of fact. *Long*, 254 Kan. at 212-13. Neither should this Court exercise its original jurisdiction over this case, when relief is available in the district court, given that factual development would require referral to a judge of the district court or a commission under Kan. Sup. Ct. R. 9.01(d). This Court is not a trial court, and as shown in Kan. Sup. Ct. R. 9.01(b), ordinarily does not attempt to operate as one.

In any event, the Petition provides no evidence and no basis for issuing any "stay" of the July 1, 2014, statute, a stay which would **alter**, not preserve the status quo as it has admittedly existed since July 1, 2014. Respondents object to a stay. The statute is presumed constitutional and Petitioners have not met their heavy burden of overcoming that presumption under the highly deferential rational basis test as argued elsewhere herein.

II. Petitioners Lack Standing Because Their Petition Does Not Allege Any Concrete And Particularized Injury As A Result Of The Challenged Law Particularly In The Specialized Area Of Mandamus.

The Petition should be dismissed for lack of standing, which is a jurisdictional issue. *Mid-Continent Specialists, Inc. v. Capital Homes, L.C.*, 279 Kan. 178, 185, 106 P.3d 483 (2005). "Under the traditional test for standing in Kansas, a person must demonstrate that he or she suffered a cognizable injury and that there is a causal connection between the injury and the challenged conduct." *Gannon v. State*, 298 Kan. 1107, 1122-23, 319 P.3d 1196 (2014). "As to standing's first element of establishing a cognizable injury," this Court has "held that a party must establish a personal interest in a court's decision and that he or she personally suffers some actual or threatened injury as a result of the challenged conduct." *Id.* "The injury must be particularized, *i.e.*, it must affect the plaintiff in a personal and individual way" as opposed to being a "generalized grievance" "common to all members of the public." *Id.*

As the party invoking this Court's jurisdiction, the Counties bear the burden of establishing these elements of standing. *Gannon*, 298 Kan. at 1122-23. But unlike the school districts in *Gannon* who the Court found had come forth with sufficient evidence to establish a claim of their own injury, framed in terms of their own constitutional duties, the Counties' Petition contains nothing of this nature. Rather, the Petition admits that there is no particularized injury and that the matter is instead a generalized grievance that "affects the petitioners, other county officials and all taxpayers in the state." Pet., at ¶ 17. The Petition itself negates the Counties' claim of standing. The supporting Memorandum merely recites that the Petitioners "have standing," but contains no facts,

no arguments and no authorities supporting that claim. *See* Pet. Mem., at 3 [unnumbered, "Point Two."].

Here, it is unclear whether and how the 2014 amendment affects county boards of commissioners specifically. Contrary to Petitioners' claim, if a county appraiser complies with K.S.A. 79-1460 as amended when appraising property for tax year 2016, there is no loss of tax monies. Pet., at ¶ 16. The county appraiser's duties generally relate to valuation and assessment to determine the assessed valuation of taxable property. K.S.A. 79-1412a. On or before June 15, the county appraiser certifies the taxable real and personal property roll to the county clerk. K.S.A. 79-1466 and K.S.A. 79-1467. Each year, the governing bodies of taxing subdivisions (including counties) adopt budgets determining the tax dollars needed to be raised by the ad valorem property tax. The amount of property tax dollars needed to fund local government is determined by these budgets, not by the total assessed valuation. The assessed valuation of taxable property is the method used to allocate a share of the tax dollars needed to each taxable property. The total tax dollars needed is divided by the total assessed valuation of taxable property to arrive at the mill levy. The county clerk performs this calculation and certifies the tax levy rates to the county treasurer on or before November 1. K.S.A. 79-1803. The mill levy is then applied to each property's assessed valuation to arrive at a tax bill.

While the mill levy would be affected by a lower total assessed valuation, the total amount of tax dollars raised to fund local government is based on the adopted budget and is the same regardless of the total assessed valuation. As such, there is no loss of tax monies from the taxing subdivision's (County's) perspective. If anyone is disadvantaged here hypothetically in the future, it may be taxpayers who did not appeal their valuation

(but conceivably could), if the mill levy increases. But this is a taxpayer concern, not a direct injury to the Counties or their Boards.

The Counties also have not alleged a concrete and particularized injury if they comply with K.S.A. 79-1460. While the Counties recite in the Petition generally that the PVD Director has supervisory authority and argue in the Memorandum that this statutory authority requires a peremptory order of stay, no factual or evidentiary basis has been presented that the PVD Director has taken, is taking, or will take any action against anyone for following K.S.A. 79-1460; this is entirely abstract and hypothetical at this juncture, unripe for any disposition in this Court.

In fact, given the statutory provisions according PVD a supervisory function of the Boards in the area of taxation, this mandamus writ of akin to a subordinate seeking mandamus against its supervisor, objecting that the supervisor has instructed them to follow the law. An analogy might be the Clerk of the Supreme Court performing duties as per K.S.A. 20-110, seeking mandamus against this Court for being told to follow Kansas statutes. Is the Clerk injured by the Court's direction to follow the law, such that s/he would have standing to seek relief in mandamus? The answer is clearly, "No."

The law of standing is particularly strict in the area of mandamus. "While mandamus will not ordinarily lie at the instance of a private citizen to compel the performance of a public duty, it has been held where an individual shows an injury or interest specific and peculiar to himself, and not one that he shares with the community in general, the remedy of mandamus and the other extraordinary remedies are available." *Stephens v. Van Arsdale*, 227 Kan. 676, 683, 608 P.2d 972 (1980). "Whether or not a private individual has brought himself within the narrow limits of the well-established

rule must be determined from the particular facts of each individual case." *Mobil Oil Corp. v. McHenry*, 200 Kan. 211, 243, 436 P.2d 982 (1968); *see also Kansas Bar Ass'n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 500-01, 14 P.3d 1154 (2000) (dismissing the mandamus action brought by the KBA and individual lawyer plaintiffs for lack of standing and as presenting a hypothetical question). Petitioners have not made that showing here.

The Petition states the Counties seek "guidance" from this Court on administration of the property valuation statutes, including K.S.A. 79-1460 as amended, Pet., at ¶ 15. But it is well established that "Kansas courts do not render advisory opinions." *Gannon*, 319 P.3d at 1208 (citing *State ex rel. Morrison v. Sebelius,* 285 Kan. 875, 888, 179 P.3d 366 (2008)). The Petition also admits that the Counties already have guidance from the PVD Director, whose statutory role it is to give such guidance. Pet., at ¶¶ 2, 13, 14. It is not for the Court to assume the statutory role of the PVD Director, as that would be a violation of the separation of powers and beyond the judicial power. *See Cochran v. State Dept. of Ag. Div. of Water Resources*, 291 Kan. 898, 903, 249 P.3d 434 (2011) ("Advisory opinions are an executive, not a judicial power.").

As shown by Appendix Exhibit 4, Attorney General opinions are another form of "guidance" available to executive branch officials concerned about the constitutionality or legality of enactments. If guidance were needed, that would have been yet another option available to the Counties.

This Petition merely paraphrases the statute and contains conclusory allegations about the feared effects of the amended statute but no facts. What the Counties really fear as a potentially adverse effect of the statute is that it "hampers the resolution of property

tax appeals" and may lead to additional litigation. Pet. Mem. at 10 [unnumbered]. However, this has not happened yet and as Johnson County itself admits, the numbers of appeals have been relatively stable over the last six years even in up and down markets. Pet. Mem., at 10 [unnumbered]. It is unknown when, if, or how the amended statute will affect anything. There is nothing particularly concrete or ripe about the manner in which the Petition is framed at this point.

In light of Petitioners' failure to show that an original action in mandamus is appropriate and Petitioners' lack of standing, the Petition for Mandamus should be dismissed.

III. K.S.A. 2014 Supp. 79-1460 Does Not Violate Article 11, § 1, Of The Kansas Constitution.

If this Court reaches the merits, the Petition for a Writ of Mandamus should be denied because K.S.A. 2014 Supp. 79-1460(a)(2) does not violate Article 11, § 1, of the Kansas Constitution, which provides in relevant part: "Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation."

As the Counties note, this Court has interpreted the uniform and equal requirement of Article 11, § 1, as imposing rational basis scrutiny. But the rational basis test, which provides a great deal of deference to the Legislature, is easily satisfied here.

A. K.S.A. 2014 Supp. 79-1460 Is Subject To Highly Deferential Rational Basis Review.

"Where constitutional challenges have been made to tax exemption schemes as violative of Article 11, Section 1, of the Kansas Constitution, this court has consistently held that the uniform and equal rate of assessment and taxation provision is, in principle

and effect, substantially identical to the principle of equality embodied in the Equal Protection Clause of the United States Constitution." *State ex rel. Tomasic v. Kansas City*, 230 Kan. 404, 426, 636 P.2d 760 (1981). Thus, in the absence of a suspect class (not at issue here), a law challenged under Article 11, § 1, is subject to rational basis review, as Petitioners admit.

To begin with, a challenged statute is entitled to a "strong presumption of validity." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 314-15 (1993). As this Court explained in *Barrett v. U.S.D. No. 259*, 272 Kan. 250, 32 P.3d 1156 (2001):

> The burden of one asserting the unconstitutionality of a particular statute is a weighty one. This is as it should be for the enacted statute is adopted through the legislative process ultimately expressing the will of the electorate in a democratic society. Thus, when approaching the review of a claim of unconstitutionality, certain basic principles of review are observed. First, the constitutionality of a statute is presumed and all doubts must be resolved in favor of its validity. Before a statute may be stricken down the statute must clearly violate the constitution. This court's duty is to uphold the statute under attack rather than defeat it, if there is any reasonable way to construe the statute as constitutionally valid, that should be done. Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt.

Id. at 255; *accord Unified Sch. Dist. No. 229 v. State*, 256 Kan. 232, 236, 885 P.2d 1170 (1994) ("When a statute is attacked as unconstitutional a presumption of constitutionality exists and the statute must be allowed to stand unless it is shown to violate a clear constitutional inhibition."); *State v. Cook*, 286 Kan. 766, 768, 187 P.3d 1283 (2008) ("We presume that legislative enactments are constitutional and resolve all doubts in favor of a statute's validity. We will not declare a statute unconstitutional as applied unless it is clear beyond a reasonable doubt that the statute infringes on constitutionally protected rights." (citations omitted)).

Rational basis review is highly deferential. *See Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 195 273 P.3d 709 (2012) (describing the standard as "very lenient"). To satisfy this standard, a challenged statute need only be "rationally related to a legitimate legislative purpose." *Barrett*, 272 Kan. at 256. "A statute is rationally related to an objective if the statute produces effects that advance, rather than retard or have no bearing on, the attainment of the objective. As long as the regulation is positively related to a conceivable legitimate purpose, it passes scrutiny." *Id.*

Under rational basis review, courts are required to defer to actual or even conceivable conclusions of the Legislature. In *Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 273 P.3d 709 (2012), the trial court held that a cut-off date grandfathering continued smoking at businesses was "arbitrary and therefore could have no rational basis." Reversing, the Supreme Court wrote:

> Downtown Bar contends the State has produced no evidence that the 2010 legislature actually chose the January 1, 2009, date to prevent drinking establishments from circumventing the ban. But no such evidence is necessary. "'[A] legislative choice is not subject to courtroom factfinding and may be based on *rational speculation* unsupported by evidence or empirical data.'" And instead of a State obligation to provide evidence, it was Downtown Bar's obligation to negative every conceivable basis for the cut-off date of January 1, 2009.

294 Kan. at 198 (citations omitted). Likewise, in *State v. Consumers Warehouse Market, Inc.*, 183 Kan. 502, 329 P.2d 638 (1958), this Court acknowledged that the "judgment of the legislature cannot be superseded by that of the court if questions relating thereto are *reasonably debatable*." 183 Kan. at 509 (emphasis added); *accord State ex rel. Mitchell v. Sage Stores Co*, 157 Kan. 404, Syl. ¶ 5 [unnumbered], 413, 141 P.2d 655 (1943) ("[T]he Legislature is entitled to its own judgment, and *its judgment cannot be superseded by the views of the court*" (emphasis added)).

This deference to legislative judgments is peculiarly acute in areas of taxation. The rational basis test, under either the Equal Protection Clause or Article 11, § 1, of the Kansas Constitution, "'imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation." *See State ex rel. Tomasic v. Kansas City*, 230 Kan. 404, 425, 636 P.2d 760 (1981) (quoting *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959)). For example, in *Peden v. State of Kansas*, 261 Kan. 239, 930 P.2d 1 (1996), a single taxpayer, Eric Peden, challenged the higher rates of income taxes imposed on single taxpayers in the State, arguing that this clear and intentional discrimination was unconstitutional and a violation of equal protection. This Court upheld the statute on review under the rational basis test, finding, among other things that the Legislature is presumed to have acted within its constitutional power, even if the statute results in some inequality. *Id.* at 252. The deferential test is violated "only if the statutory classification rests on grounds wholly irrelevant to achievement of the State's legitimate objective." *Id.* (quoting *Leiker v. Gafford*, 245 Kan. 325, 363-64, 778 P.2d 823 (1989)). The Court's duty under the rational basis test is to uphold the statute if any state of facts reasonably may be conceived to justify it. *Id.*

B. K.S.A. 2014 Supp. 79-1460 Easily Satisfies Rational Basis Review.

Applying these standards demonstrates that the challenged portions of K.S.A. 2014 Supp. 79-1460 easily satisfy rational basis review. The legislative history demonstrates that the law was a reasonable and considered policy judgment of the Legislature based on legitimate objectives. And Petitioners certainly have not negated *every conceivable justification for the law*, as they must to prevail. *See Downtown Bar & Grill*, 294 Kan. at 198.

1. The Legislative History Indicates That K.S.A. 79-1460 Was A Reasonable And Considered Policy Decision Of The Legislature.

While Petitioners assert that "[i]n reviewing the legislative history of H. Sub. S.B. 231, no reason was found for the amendments to K.S.A. 79-1460," Pet. Mem. at 9 [unnumbered], this assertion is unfounded. Contrary to the Counties' assertion and as shown in the attached legislative history (Appendix Exhibits 2 and 3), there is *significant* legislative history and historical context relating to both the 1992 law and the 2014 amendment demonstrating that K.S.A. 79-1460 is based upon a considered policy judgment of the Legislature.

The 1992 Law

The language found in K.S.A. 2013 Supp. 79-1460(a)(2) first appeared in 1992 in H. Sub. For S.B. No. 8, 1992 Kan. Sess. Laws ch. 282, 4 and originated in House Bill 2811, proposing that "with respect to any real property the valuation for which has been finally determined pursuant to the valuation appeals process," the valuation could not be raised in the following year unless "documented substantial and compelling reasons therefor exist and are provided by the county appraiser."

Minutes of the House Committee on Taxation of a hearing on February 6, 1992, reflect the following:

> Rep. Vancrum said the terms 'substantial and compelling' in HB 2812 [sic] would give county appraisers too much latitude in the determination of what the changes in fair market values were from year to year, but that such changes were rare. Clark Agreed. He also said appraisers should not change values simply because values were changed on a computer.
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> Vic Miller, Shawnee County tax attorney, testified in regard to HB 2811 (Attachment 3). He said that after an appeal the burden of proof should lie with the county to determine fair market value. He spoke against leaving

> the responsibility to PVD to set up rules and regulations that would establish what 'substantial and compelling' means. He said that would not be necessary if the burden of proof were put on the county appraiser where values have been determined on appeal. Miller said he was not opposed to establishing statutory criteria determining the definition, but that HB 2811 did not do that.

See Appendix Exhibit 2E.

The Minutes also reflect that Rep. Mary Jane Johnson testified in favor of HB 2811.[1] The testimony included as an attachment Attorney General Opinion No. 91-134, which discusses a July 2, 1990, directive issued by the director of property valuation requiring county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value for tax year 1991. *See* Appendix Exhibit 2E (Minutes, House Taxation Comm., February 6, 1992 (H.B. 2811), attach. 2).

According to Attorney General Opinion 91-134, the director of property valuation issued a directive dated July 2, 1990, which stated in part:

> "Except for land devoted to agricultural use and a few other exceptions, real property in Kansas is required to be valued at its 'fair market value,' which is defined in K.S.A. 79-503a as 'the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming the parties are acting without undue compulsion.' K.S.A. 79-503a further provides that sales shall not be used as the sole criteria of 'fair market value,' but that other factors shall be considered in finding 'fair market value.' Therefore, in my opinion, due deference should be given to the final results of the 1989/1900 hearing and appeals process in finding 'fair market value' or 'use value.' The presumption is that these final results represent the 'fair market value' or 'use value' of the property. . . .
>
> "County appraisers are directed to carefully analyze the final results of the hearing and appeals processes for both tax years 1989 and 1990 in

[1] While the minutes mention HB 2812, the correct cite appears to be HB 2811 because Attachment 2 to the testimony addresses issues related to HB 2811, not HB 2812.

> estimating 'fair market value' and 'use value' for tax year 1991. Only when substantial and compelling reasons to deviate from such 1989 and 1990 final values have been documented should such value be increased for tax year 1991."

Attorney General Opinion 91-134, at 2-3. The Attorney General wrote:

> [Y]ou seek an interpretation of the phrase 'substantial and compelling reasons' in the context of determining whether the final results of a previous year's hearing and appeals process may be altered by the county appraiser. We believe the intent of this language was to place on the county appraiser the burden of documenting and proving that the value assigned a piece of property through a prior year's hearing or appeals process is not its current fair market or use value. This interpretation takes into account the county appraiser's duty to update appraisal on an annual basis (K.S.A. 1990 Supp. 79-1476), but at the same time requires the appraiser to account for any change in value. The reasons given for altering the value from that reached in the appeals process must be compelling; *the presumption is that the values finally arrived at in the hearing and appeals processes were the fair market or use values in that those were the values agreed to be such by the taxpayer and the government officials charged with the responsibility of setting such values.* However, if the appraiser can in specific instances prove by demonstrative evidence that fair market value was not achieved through the processes or that changes have occurred in the property or the market, the value can be altered.

Id. at 4-5 (emphasis added). The Legislature presumably relied on these considerations in adopting L. 1992, ch. 282, § 4. For the convenience of the Court, Attorney General Opinions referenced herein are also included in the Appendix as Exhibit 4.

Following passage of the law, in a 1993 *Survey of Kansas Law: Taxation*, Professor Sandra Craig McKenzie of the University of Kansas Law School recounted:

> In July 1988, when this survey period began, Kansas counties were struggling to complete stateside reappraisal of real property while Kansas taxpayers anxiously awaited the results. The first set of property tax bills based on the reappraised values arrived in November 1989, and the clamor for property tax relief began immediately, prompting a special session of the legislature in December 1989. The 'property tax crisis' remained on the legislative agenda for the next four years, and undoubtedly played a role in the defeat of Governor Mike Hayden in the 1990 election. …

> Statewide reappraisal dominated the property tax landscape during the survey period, beginning in the spring of 1989 when counties mailed change-of-value notices to taxpayers showing reappraised values for real property. Lead by the Wichita Eagle Beacon, newspapers across the state published the new values as they became available. A large number of taxpayers pursued the valuation appeal process, which involves a meeting with the county appraiser, and subsequent review by hearing officers, the county commission, and finally the Board of Tax Appeals. …
>
> Changes in the property tax calendar for 1992 have effectively expanded the time frame for valuation appeals. Change-of-value notices must be mailed by March 1 (formerly April 1) of each year. …
>
> Concerns about the quality of appraisals also prompted legislation requiring the Director of Property Valuation to establish standards for property tax appraisals, including a minimum requirement that appraisals be in writing. Appraisals generated under the C.A.M.A. system will be sufficient to meet the written requirement. Pending action by the Director of Property Valuation, appraisals must conform with generally accepted appraisal standards in effect on March 1, 1992.
>
> Another 1992 change addresses the frustration of taxpayers who have successfully pursued appeals and obtained reductions in appraised value, only to see the valuation of the property increased the following year. Many taxpayers are unfamiliar with the concept of annual updating, which was not done for real property prior to 1989. Many counties also experienced technical difficulties with the C.A.M.A. software in incorporating the changes made during the appeals process into the C.A.M.A. data base. And, in some instances, the reductions may simply not reflect fair market value. Legislation approved in 1992 will prohibit an increase in the year following a successful valuation appeal unless the county appraiser can document compelling and substantial reasons to increase the value. [FN 39. Kan. Stat. Ann. § 79-1460(c) (Supp. 1992).]"

Sandra Craig McKenzie, *Survey of Kansas Law: Taxation*, 41 Kan. L. Rev. 727, 727-33 (1993).

The 2014 Amendment

The relevant portion of K.S.A. 79-1460 adopted in 1992 remained the same until the 2014 amendments. The 2014 amendments had their origins in the 2013 legislative session. Section 3 of House Bill 2134, in both its original form and as amended by House

Committee, proposed amending K.S.A. 2012 Supp. 79-1460(a)(2) to extend the documented substantial and compelling reasons provision for the next three years following the taxable year that the valuation for real property had been reduced due to a final determination made pursuant to the appeals process and to add the following definition of "substantial and compelling reasons" as subsection (c):

> For the purposes of this section:
>
> (1) The term "substantial and compelling reasons" means a change in the character of the use of the property or a substantial addition or improvement to the property;
>
> (2) the term "substantial addition or improvement to the property" means any expansion or enlargement of the physical occupancy of the property through the construction of any new structures or improvements on the property or any renovations that expand or enlarge the square footage of any existing structures or improvements on the property. The term "substantial addition or improvement to the property" shall not include:
>
> (A) Any maintenance, renovation or repair of any existing structures, equipment or improvements on the property that does not expand or enlarge the square footage of any existing structures or improvements on the property; or
>
> (B) reconstruction or replacement of any existing equipment or components of any existing structures or improvement on the property.

At the House Taxation Committee hearing on House Bill 2134 on March 6, 2013, Luke Bell, Vice President of Government Affairs with the Kansas Association of Realtors, testified in support of the bill asserting that the dramatic growth in property tax burdens on Kansas farmers, homeowners and small businesses stifles the economic prosperity of many Kansas small businesses that have seen consistent, dramatic increase in the amount of their business income being devoted to paying property tax assessments. This burden decreases the amount of capital that can be poured back into the business to expand by hiring new employees or investing in new business capacity. *See* Appendix

Exhibit 3A (Minutes, House Taxation Comm., March 6, 2013 (H.B. 2134), attach. 1). Mr. Bell testified in part that:

> When the property owner finally reaches the end of this arduous process (following thousands of dollars of consultants' and attorneys' fees and months or years of waiting) and is granted a decreased valuation of the property, good public policy would dictate that the successful conclusion of this process would provide the property owner with a certain amount of consistency and predictability in their property tax valuation for the next few years. Especially for commercial properties, many property owners rely on this consistent and predictable property valuation to obtain financing and manage their financial investment in the property.
>
> …
>
> As proposed in Section 3(a) …, the new language in HB 2134 would simply guarantee that the property owner would be able to enjoy the relief provided by the first successful appeal for an uninterrupted period of three taxable years following the appeal. Unless the county appraiser was able to detail a 'substantial and compelling reason' for increasing the valuation with this time period, the property owner would have consistency and predictability in the valuation of the subject property.
>
> Second, the new language in Section 3(c) … would define the term 'substantial and compelling reasons' to mean a change in the character of the use of the property or a substantial addition or improvement to the property. As discussed above, current law does not define the term 'substantial and compelling reasons' and therefore places no limits on the justification that can be used by a county appraiser to increase the valuation of the property following a successful appeal.
>
> ...
>
> As proposed in Section 3(c) …, the new language in HB 2134 will simply provide some objective criteria that the county appraiser will be required to follow when determining whether the valuation of the subject property can be increased following a successful appeal. The proposed definition of 'substantial and compelling reasons' in HB 2134 is completely reasonable and is consistent with relevant case law concerning the grandfathering of properties with existing, non-conforming uses in zoning law."

Appendix Exhibit 3A (Minutes, House Taxation Comm., March 6, 2013 (H.B. 2134), attach. 1).

During the 2014 legislative session, at hearings on House Bill No. 2614 on February 19 and 20, 2014, Mr. Bell noted that H.B. 2134 had been overwhelmingly approved by the House Taxation Committee during the 2013 session and that many of the provisions in H.B. 2134 were very similar to the provisions in H.B. 2614. He requested that H.B. 2614 be amended to include Section 3 of H.B. 2134. Mr. Bell also reiterated his testimony regarding Section 3 of H.B. 2134. *See* Exhibit 3C (Minutes, House Taxation Comm., February 20, 2014 (H.B. 2614), attach. 1). Subsequent to the hearings, Substitute for House Bill No. 2614, § 11 included the proposed amended language from H.B. 2134, § 3.

On March 13, 2014, the House Taxation Committee amended Senate Bill No. 231 to strike its original provisions and incorporate many provisions of Substitute for House Bill No. 2614 (with modifications). *See* Exhibit 3D (Supplemental Note on House Substitute for Senate Bill No. 231, at 5-6). Subsequently, "[t]he House Committee of the Whole on March 19, 2014 reduced from three to two years the proposed amount of time (compared to one year under current law) that county appraisers would have to wait before increasing the value of certain property absent substantial and compelling reasons." *Id.* at 6. Further, the term "substantial addition or improvement to the property" found in subsection (c)(2) was modified from the language used in House Bills 2614 and 2134. The final version of the definition included *renovation of any existing structures or improvements on the property* as a "substantial addition or improvement to the property" that constitutes a "substantial and compelling reason." This appears to have been in response to concerns in opposition testimony at hearings on House Bills 2614 and 2134

regarding the requirement of an expansion or enlargement of square footage in order to constitute a substantial and compelling reason found in those bills.

This review of legislative history reveals that one purpose of the 2014 amendments was to promote economic growth and consistency and predictability in the appraisal process. The argument was that good public policy would dictate that the successful conclusion of the appeals process would provide the property owner with a certain amount of consistency and predictability in their property tax valuation for the next few years. Especially for commercial properties, many property owners rely on this consistent and predictable property valuation to obtain financing and manage their financial investment in the property. Further, it was argued that it is completely unfair and an example of very poor public policy to require a property owner to undergo a subsequent valuation appeal on the subject property when they have just spent a considerable amount of financial resources and time in obtaining relief on the first successful appeal.

The State benefits from "economic growth and providing a means of livelihood for its citizens." *Tomasic*, 237 Kan. at 580-81. Similarly, the State benefits from public confidence in the appraisal and appeal processes. In light of the two-year limitation and the limited number of properties to which this provision may apply, any partial exemption that may result from the amendments will not lead to large accumulations of tax-exempt property. Further, any partial exemption created by the amendment is not based upon the owner, but is based upon the property's value being reduced in the appeals process (*i.e.*, value being reduced to the best indication of fair market value). In other words, the property was arguably overvalued and it was necessary to pursue the

appeals process in order for its value to be reduced to its fair market value. Although there may be some resulting inequity (which is true of any exemption), there is no suspect class involved and the class of property (real property whose value was overvalued and reduced in the appeals process) bears a rational relation to the purpose of the legislation – promoting consistency and predictability for property owners who were required to expend financial and time resources to pursue the appeals process to obtain fair market value for the property. While Petitioners may not agree with the public policy, the propriety, wisdom, and necessity of the legislation are exclusively matters for Legislative determination.

2. Petitioners Have Failed To Negate All Other Conceivable Justifications For K.S.A. 2014 Supp. 79-1460.

Although the legislative history here indicates some of the reasons for the challenged law, this sort of evidence is not necessary. A law survives rational basis review as long as there is some conceivable justification for the law. *See, e.g.*, *Villa v. Kansas Health Policy Auth.*, 296 Kan. 315, 325, 291 P.3d 1056 (2013). Because the Constitution does not "require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *See F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993). Petitioners must negate every conceivable justification for a law to prevail under rational basis review. *Villa*, 296 Kan. at 325.

There are at least three other conceivable justifications for the challenged portions of K.S.A. 2014 Supp. 79-1460.

First, the Legislature could have concluded that the law provides a reasonable means of reaching fair market value. As Attorney General Opinion 91-134 observed, it is reasonable to presume "that the values finally arrived at in the hearing and appeals processes were the fair market or use values in that those were the values agreed to be such by the taxpayer and the government officials charged with the responsibility of setting such values." There is nothing unreasonable in requiring county appraisers to demonstrate substantial and compelling reasons if they wish to turn around and raise the valuation in the next two years following a successful appeal.

As indicated by K.S.A. 2015 Supp. 79-503a and generally accepted appraisal procedures, numerous factors are considered and weighed in order to develop a final opinion of fair market value. The three basic appraisal methodologies, known as the sales comparison approach, the cost approach and the income capitalization approach, are considered. Other factors may also be considered if relevant to a particular property. For example, an arms-length sale price may be given substantial weight, but is not the sole criteria of market value for tax purposes. *Wolf Creek Golf Links, Inc. v. Johnson Board of Co. Comm'rs*, 18 Kan. App. 2d 263, 266, 853 P.2d 62 (1993). The listing price of a property is also one factor to consider when it exists, but it is by no means the sole criteria of market value or the strongest indicator of market value. *See Wagner v. State of Kansas, et al.*, 46 Kan. App. 2d 858, 265 P.3d 577 (2011) (USPAP Standards Rule 1-5 states that a listing of the property is a proper consideration in developing a real property appraisal.). For purposes of valuing oil and gas leases at fair market value, the Legislature has provided in K.S.A. 79-331 that the appraiser shall take into consideration the age of the wells, the quantity of oil and gas produced, the nearness to market, the cost of

operation as well as other considerations. Not all factors are relevant to every property within the same class, but that does not make those factors nonuniform or unequal.

K.S.A. 2014 Supp. 79-1460(a) does not diminish the county appraiser's responsibility to value property annually at its fair market value, which in some cases may involve an increase in value. In order to increase the valuation of any real property, the statute procedurally requires the county appraiser review the record of the latest physical inspection, find that documentation exists to support such increase in valuation in compliance with the directives and specifications of the director of property valuation, and make such record and documentation available to the affected taxpayer. K.S.A. 2015 Supp. 79-1460(a)(1). When the valuation of real property has been reduced pursuant to the appeals process, the county appraiser has an additional duty for the next two taxable years when reviewing the county's mass appraisal methodologies and other relevant factors. Where the mass appraisal methodologies reflect an increase in value, the county appraiser must find "documented substantial and compelling reasons" to increase the appraised value when applying his or her appraisal judgment to render an opinion of fair market value. K.S.A. 2015 Supp. 79-1460(a)(2).

Interpreting the prior language of the statute, then Attorney General Carla J. Stovall opined in Attorney General Opinion No. 95-71 as follows:

> K.S.A. 1994 Supp. 79-1460 in no way interferes with the authority of the county appraiser to increase the valuation of real property within the assessment district if an increase is necessary to place the property valuation at fair market value. However, the statute places procedural restrictions on the exercise of that duty. Before increasing the valuation of real property, the county appraiser must review the record of the latest physical inspection of the property to determine if documentation exists to support the increase and make the record of this documentation available to the taxpayer. K.S.A. 1994 Supp. 79-1460(a). The determination as to the valuation of the property remains with the county appraiser and must

> be its fair market value as determined by K.S.A. 1994 Supp. 79-503a and guidelines established by the director of property valuation.
>
> In the year immediately following a reduction in valuation as a result of a final determination made pursuant to a valuation appeal (whether by arbitration through K.S.A. 1994 Supp. 79-1494 or by hearing and appeal through K.S.A. 1994 Supp. 79-1448), the burden of proving the need for an increase in valuation falls on the county appraiser to demonstrate 'substantial and compelling reasons' for the increase. Again, this language does not diminish the responsibility of the county appraiser to appraise the property at its fair market value, which may involve an increase. Rather, this provision places a higher burden on the appraiser in demonstrating the reasons for any increase. Furthermore, we note that, pursuant to K.S.A. 1994 Supp. 79-1460, this higher burden of proof only exists for the taxable year immediately following the year in which a valuation was reduced by a final determination made pursuant to the appeal process. In all years subsequent to the one following the appeal determination, the only restriction with respect to an increase in valuation is that the county appraiser must review the record of the latest physical inspection.

In any event, the statute as amended certainly does not prevent taxing officials from reaching the value indicated by mass appraisal methodologies in *all* (or even most) cases where the value of real property was reduced in the appeals process. In those cases where the mass appraisal methodologies in the next following two years do not reflect an increase in value, the value established in the appeals process may continue to reflect the fair market value of the property for the following year or the value may be need to be lowered to its fair market value if the valuation methodologies reflect a lower value. It is important to remember that the county appraiser is reviewing numerous relevant factors including, but not limited to, the sales comparison approach, cost approach and income approach, and using appraisal judgment to conclude the best reflection of fair market value. Although appraised value must be one finite number, an appraised value is ultimately an appraisal opinion of fair market value derived from a range of indicated values and weighing relevant evidence. In appraisal practice, very small changes in

indicated values do not always necessitate an increased value and qualified appraisers may have differing opinions of value when considering the same evidence.

In those cases where "substantial and compelling reasons" exist as defined by statute, the county appraiser may increase the valuation of the property in the next following two years if the mass appraisal methodologies and other relevant factors lead the county appraiser to conclude that the fair market value has increased and the county appraiser has complied with K.S.A. 79-1460(a)(1). "Substantial and compelling reasons" include a change in the character of the use of the property, the construction of any new structures or improvements on the property, or the renovation of any existing structures or improvements on the property.

It is a reasonable interpretation of K.S.A. 2015 Supp. 79-1460 to describe it as providing another factor to be considered when determining fair market value in the next two years following a reduction in value as a result of the appeals process. K.S.A. 2015 Supp. 79-503a allows other factors to be considered in the appraisal process. In terms of the present Petition, notably the statute does not instruct the County to not perform an appraisal analysis in the two years following a reduction in value in the appeal process. It merely adds additional factors to be considered by the appraiser, or additional duties, when using appraisal judgment to select the best indication of fair market value as the appraised value of the subject property. In other words, the 2014 amendments further define factors to consider in determining "fair market value" for the next two taxable years following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process. If there are no documented substantial and compelling reasons to support an increase in value, then the

value from the appeal process remains the appraised value, i.e. "fair market value." Petitioners' argument fails to recognize that it is within the Legislature's power to define fair market value and to provide relevant factors to be considered.

Second, the Legislature could have adopted the law and the amendment to compensate property owners for the time and effort they invest in successfully appealing an incorrect appraisal of their property. Under this view, K.S.A. 79-1460(a)(2) arguably provides a partial exemption to such real property. This partial exemption, however, is not prohibited by the Kansas Constitution. *See* Kan. Atty. Gen. Op. No. 82-234 1982 WL 187723 (Nov. 4, 1982) (A partial exemption from taxation to property constructed or purchased in part with proceeds of industrial revenue bonds is not prohibited by Article 11, Section 1 of the Kansas Constitution; Article 11, Section 1 of the Kansas Constitution permits the granting of partial exemptions from taxation so long as the exemption is based on a purpose of promoting the general welfare). For the Court's convenience, a copy of this Opinion is included in the Appendix as Exhibit 4.

In *State ex rel. Tomasic*, in making short work of a challenge to a property tax exemption as violating Article 11, Section 1, the Court explained as follows:

> Property which is subject to taxation is taxed at a uniform and equal rate. *However, tax exemptions are constitutionally permissible.* One type of tax exemption is the constitutional exemption which demands the property be 'used exclusively' for specified purposes. The constitution does not provide, however, that other exemptions may not be made. The legislature may provide other statutory exemptions if such exemptions have a public purpose and promote the general welfare. Such statutory exemptions may be broader than the constitutional ones. Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare.

230 Kan. at 411-12 (citations omitted). Here, the Legislature could have rationally concluded that property owners who successfully appeal an appraisal should be able to

enjoy the fruits of their labors for at least two years provided there are no substantial changes to their property.

Third, as Petitioners themselves note (inconsistent with their argument that the Legislature had no rational basis for the amendment), the Legislature may have adopted the law to prevent county appraisers from retaliating against taxpayers who are successful in appealing their values by quickly raising those values again at the next opportunity. Indeed, the Court of Appeals has already identified this as one of the possible purposes for the law. *See In re Protests of Oakhill Land Co.*, 46 Kan. App. 2d 1105, 1106, 269 P.3d 876 (2012) ("K.S.A. 2010 Supp. 79–1460(a)(2) prevents retaliation when a taxpayer wins an appeal by providing that the valuation not be raised the following year unless 'documented substantial and compelling reasons exist' to do so.").

Any one of these justifications, or any of the justifications mentioned in the legislative testimony, would be sufficient to uphold K.S.A. 2014 Supp. 79–1460 against a rational basis challenge. Together, they render the law unassailable.

C. Petitioners Conflate Rational Basis Review With A Form Of Heightened Scrutiny.

While the Counties concede that rational basis review applies—as they must given this Court's precedents—their Petition and Memorandum in Support convey a fundamental misunderstanding of the nature of that review. Petitioners' arguments appear to conflate rational basis review with a form of heightened scrutiny that would have this Court second-guess the reasonable policy judgments of the Legislature.

The Petition appears to be premised on the erroneous assumption that anything that has any tendency whatsoever, actual or hypothetical, now or even in the imagined future, to diminish absolute uniformity and equality in taxation is unconstitutional.

However, that is not the test. If it were, the statute as amended in 1992, unchallenged by the counties, would be unconstitutional, as would virtually all statutory exemptions and many of the factors listed in K.S.A. 2015 Supp. 79-503a. This is not Kansas law which, to the contrary, recognizes the wide latitude of the Legislature in areas of taxation.

The Counties suggest that many of the possible justifications for the law are insufficient because the law may lead to some disparities. For example, they offer a hypothetical involving a home damaged by a Christmas tree fire. Pet. Mem., at 6 [unnumbered, "Point Five"].

But this misses the point. Rational basis review does not demand complete equality. *See Peden*, 261 Kan. at 258-59. A law may be both over- and under-inclusive; "perfection is by no means required." *See Vance v. Bradley*, 440 U.S. 93, 108 (1979) (a law challenged under rational basis review "does not offend the Constitution simply because the classification 'is not made with mathematical nicety'"). As long as the law advances a legitimate legislative purpose, it must be upheld. *Barrett*, 272 Kan. at 256.

Similarly, Petitioners attempt to challenge the actual and presumed factual findings of the Legislature. For instance, they argue that the Legislature's conclusions regarding the need for the law are unfounded because "most reductions in value occur at the informal level" when "the taxpayer provides information that the appraiser does not have." Pet. Mem., at 9 [unnumbered, "Point Six"]. But a "legislative choice is not subject to courtroom factfinding and may be based on *rational speculation* unsupported by evidence or empirical data." *See Downtown Bar and Grill*, 294 Kan. at 198. "Under the reasonable basis test, a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Injured Workers of Kansas v. Franklin*, 262

Kan. 840, 847, 942 P.2d 591 (1997). As this Court recognized in Justice Davis' Opinion in *Peden,* this Court's duty under the rational basis test is to uphold the statute if any state of facts reasonably may be conceived to justify it. 261 Kan. at 252.

In addressing the retaliation justification for the law, the Counties argue that the means chosen by the Legislature are not necessary because county appraisers who knowingly and willfully violate the law are already subject to criminal penalties or removal from office, *see* Pet. Mem., at 10-11 [unnumbered, "Point Seven"]. But, once again, this is not the test—the Counties cite nothing in support of the proposition that the availability of one means precludes the Legislature from any other means. This simply is not the law. Nothing under rational basis review requires that the challenged provision be necessary or the least restrictive means to achieve the desired objective. Again, Petitioners appear to be conflating rational basis review with a form of heightened scrutiny.

Finally, Petitioners make several arguments why they believe K.S.A. 2015 Supp. 79-1460 is bad policy. For instance, they argue that the law will hamper the resolution of tax appeals because county appraisers will be less likely to compromise values. Pet. Mem., at 10 [unnumbered, "Point Six"]. While this concern would have been relevant in a public policy debate before the Legislature, it has no bearing on the constitutional question under the rational basis test. Rational basis review does not allow this Court to substitute its own judgment regarding ideal tax policy for that of the Legislature.

As this Court has readily acknowledged, "Our function is not that of a super-legislature which weighs the wisdom of the legislation." *Blue v. McBride*, 252 Kan. 894, 915, 850 P.2d 852 (1993). Instead, "the propriety, wisdom, necessity and expedience of

legislation are exclusively matters for legislative determination and courts will not invalidate laws, otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject is wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere." *State ex rel. Tomasic v. Unified Gov't of Wyandotte Cnty./Kansas City, Kan.*, 264 Kan. 293, 300-01, 955 P.2d 1136 (1998) (citations omitted).

When the rational basis test is properly applied, Petitioners' arguments are untenable.

IV. If This Court Finds A Constitutional Violation, Only The Offending Provisions Should Be Declared Invalid.

If the Court declines to dismiss this action and concludes that the 2014 amendments of K.S.A. 79-1460(a)(2) and (c) are unconstitutional, Respondents respectfully request the remainder of the statute K.S.A. 79-1460 be severed and remain valid. K.S.A. 79-1484 provides that: "If any sentence, clause, subsection or section of this act is held unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted the remainder of the act not so held unconstitutional or invalid." There is no challenge to K.S.A. 2015 Supp. 79-1460(a)(1) and the remainder of subsection (a) after (a)(2), nor is there is any challenge to K.S.A. 2015 Supp. 79-1460(b). These provisions are necessary to the appraisal process, to the property tax calendar, and to provide information to property owners.

CONCLUSION

Respondents Secretary of Revenue Nick Jordan and PVD Director David Harper

request that this original action in mandamus be dismissed because they have not failed to perform any clearly defined duty and adequate relief is available, if at all, in the district court as per Kan. Sup. Ct. R. 9.01(b). The Petitioners also lack standing to bring this action as they have not alleged a concrete and particularized injury. They are also seeking an advisory opinion, which is not available from this Court.

Alternatively, Respondents request that the Court find H. Sub. for S.B. No. 231, § 11 (the 2014 amendment of K.S.A. 79-1460) does not violate the Kansas Constitution. The law easily satisfies rational basis review.

In any event, Respondents request that the Court deny Petitioners' request to stay the implementation of K.S.A. 79-1460, as amended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2016, I electronically filed the foregoing with the Clerk of the Court using the Court's e-filing system, which sent electronic notification of such filing to opposing counsel electronically registered with the Court.

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INDEX TO EXHIBITS IN APPENDIX

Exhibit 1

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Sam Brownback, Governor

DIRECTIVE #14-047

TO: **County Appraisers**

SUBJECT: **Uniform Standards of Professional Appraisal Practice**

This Directive Supersedes Directive #92-006

This directive is adopted pursuant to the provisions of K.S.A. 79-505(a), and shall take effect and be in force from and after its publication in the Kansas Register.

For the 2015 and 2016 valuation years, the county or district appraiser shall perform all appraisal functions in conformity with *Uniform Standards of Professional Appraisal Practice* (USPAP), 2014-2015 Edition, The Appraisal Foundation, as required by K.S.A. 79-505(a)(1) and (2) and as further defined herein.

USPAP Standard 6 shall be followed in developing and reporting a mass appraisal for ad valorem taxation purposes. Standard 6 may also be adhered to in revaluing individual properties that initially have been appraised through mass appraisal methods and techniques, but whose value estimates are reexamined and reconsidered as a result of the hearing and appeals processes. Supporting documentation must be developed and reported for all model component overrides and adjustments.

USPAP Standard 1 shall be followed in performing a "single real property appraisal" and USPAP Standard 2 shall be followed in reporting the results of a single real property appraisal. Most properties in Kansas can be valued though the Orion computer assisted mass appraisal (CAMA) system; however, some parcels in Kansas do not lend themselves to mass appraisal methods and techniques. If a parcel cannot be credibly appraised with a mass appraisal model (see Standards Rule 6-4), USPAP Standards 1 and 2 would apply.

USPAP Standard 3 shall be followed in developing and reporting an appraisal review. An appraisal review is the process of developing an opinion of the quality of another appraiser's work performed as part of an appraisal or appraisal review assignment. It is the responsibility of the county and district appraiser to analyze all relevant single property appraisals provided by a property owner during the appeals process. A comparison of descriptive data, including subject property characteristics and comparable property information between the mass appraisal and single property appraisal report, and explanation of the findings, does not constitute a Standard 3 review.

By law, the written statements produced by the CAMA system setting forth an opinion of defined value of an adequately described specific property as of a specific date, supported by presentation and analysis of relevant market information, are deemed to be written appraisals for individual parcels of real property (see K.S.A. 79-504). Documentation of the written report of a mass appraisal is a requirement of USPAP Standards Rule 6-8. The workfile for the mass appraisal assignment shall contain the information and analyses to support the valuation models developed for all properties in the jurisdiction and provide an understanding of individual property valuation results. Substantial documentation and justification shall be provided for model adjustments and overrides made to individual parcels.

Appraisals developed for ad valorem taxation in Kansas must comply with statutes and regulations promulgated by the director of property valuation. Most of these requirements do not preclude compliance with any part of USPAP, but some place specific requirements on the scope of work. The director of property valuation has identified the following assignment elements that are necessary in Kansas to properly identify the ad valorem appraisal problem and develop credible assignment results:

- The purpose of ad valorem taxation is to finance the taxing districts in Kansas (see K.S.A. 79-1468, 79-1801, 79-1803, and 79-1806). County or district appraisers are required to develop the appraisal estimates that become the assessments used by the taxing districts (see K.S.A. 19-430, 79-5a27, 12-5250, 12-1775, 79-1409, 79-1411a, 79-1411b,). Therefore, county commissioners serve as the client and the taxing districts are the intended users of the appraisal. This scope of work compliance requirement applies to Standards Rule 6-2(a), 1-2(a), or 7-2(a), as applicable. The definition of intended user has a specific meaning in USPAP. Parties who receive a copy of the appraisal as a consequence of disclosure requirements do not become intended users of the report. (see statement on Appraisal Standards No. 9 [SMT-9]). Taxpayers and property owners are not intended users of the appraisal prepared for ad valorem taxation in Kansas unless specifically stated as such in the appraiser's Scope of Work document.

- The definition of fair market value for ad valorem appraisals in Kansas is found in K.S.A 79-503a. This scope of work compliance requirement applies to Standards Rule 6-2(c), 1-2(c), or 7-2(c), as applicable.

- The effective appraisal date for all property in Kansas is January 1, as required by K.S.A. 79-1455. This scope of work compliance requirement applies to Standards Rule 6-2(d), 1-2(d), or 7-2(d), as applicable.

- A minimum standardized set of physical property characteristics has been determined relevant and necessary for the effective and efficient mass appraisal of real property in Kansas, as required by K.S.A. 79-1477. This scope of work compliance requirement applies to Standards Rule 6-2(e)(iii).

Any contradiction between state law or regulations and USPAP triggers the USPAP JURISDICTIONAL EXCEPTION RULE. Instructions from a client do not establish a jurisdictional exception. The director has invoked the following jurisdictional exceptions for ad valorem appraisal assignments:

- Land devoted to agricultural use in Kansas shall be appraised at both market value and use value as required by K.S.A 79-1476. The market value appraisal of agricultural land shall follow USPAP rules. However, the prescribed methods used to develop use values are a statutory requirement. Use value appraisal estimates shall be utilized for ad valorem taxation of agricultural land. The requirement to value agricultural land by use value for assessment purposes is a jurisdictional exception.

- Kansas statutes require the following subclasses of tangible personal property to be appraised at fair market value: manufactured homes, oil and gas interest, material and equipment used in operating oil and gas wells, tax roll motor vehicles (with a 24M tag), trailers (non-business use), commercial and industrial machinery and equipment no longer being used in the production of income, and other personal property not elsewhere classified (such as aircraft, hot air balloons, golf carts, snowmobiles, watercraft and boat trailers). The county appraiser may choose from one of two options to develop and report the appraisal of such property:

  - The appraisal development and reporting methods promulgated by the Division of Property Valuation and published in appraisal guides shall be used by the county appraiser. The property valuation director permits the county appraiser to invoke a jurisdictional exception to employ this option (see K.S.A 79-1412a *sixth*, 79-1456).

  - County appraisers may deviate from the guides on an individual property. Single property appraisals shall be developed by following USPAP Standard 7 and reported under requirements of USPAP Standard 8 (see K.S.A. 79-1456).

- The valuation of non-exempt commercial and industrial machinery and equipment (class 2, subclass 5) and certain motor vehicles is prescribed by statute (K.S.A. 79-5105a and amendments thereto). These valuation methods are based upon a mathematical formula and the director of property valuation invokes a jurisdictional exception to USPAP.

- When the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process the county appraiser shall comply with K.S.A. 79-1460. This requirement is a jurisdictional exception when it prevents the value of a parcel from increasing to the value as indicated by the mass appraisal process.

Approved: May 16, 2014

David N. Harper
Director of Property Valuation

David C. Cunningham, Director
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Department of Revenue
Division of Property Valuation

DIRECTIVE #92-006

TO: **County Appraisers**

SUBJECT: **Uniform Standards of Professional Appraisal Practice**

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 perform all appraisal functions in conformity with the Uniform Standards of Professional Appraisal Practice, Standards 2 and 6, as required by L. 1992, ch. 249, § 1. The Uniform Standards of Professional Appraisal Practice are hereby incorporated by reference as though fully set forth herein.

Approved: November 30, 1992

David C. Cunningham
Director of Property Valuation

Exhibit 2

SB 811, An act relating to certain property tax exemptions; amending K.S.A. 79-201a and K.S.A. 1991 Supp. 79-213 and repealing the existing sections.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:
Committee of the Whole: SB 811; HB 3208.

MESSAGE FROM THE HOUSE

The House concurs in Senate amendments to HB 2111.

The House concurs in Senate amendments to HB 2828 and requests the Senate to return the bill.

The House concurs in Senate amendments to HB 2856 and requests the Senate to return the bill.

The House concurs in Senate amendments to HB 2375 and requests the Senate to return the bill.

The House adopts the Conference Committee Report on H. Sub. for SB 8.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT: Your committee on conference on House amendments to H. Sub. for SB 8, An act relating to property taxation; concerning the administration and the process for appealing the classification and valuation of property for purposes thereof; amending K.S.A. 79-306, 79-332a, 79-1466, 79-1467, 79-1604, 79-1605, 79-1608, 79-1609 and 79-1610 and K.S.A. 1991 Supp. 19-101a, 79-1448, 79-1460 and 79-1606 and repealing the existing sections; also repealing K.S.A. 79-1601 and 79-1603 and K.S.A. 1991 Supp. 79-1602 and 79-1607, begs leave to submit the following report:

The Senate accedes to all of the House amendments to the bill;

And your committee on conference further agrees to amend the bill, as printed with amendments of the House Committee of the Whole, as follows:

On page 1, by striking all of lines 18 to 31, inclusive; after line 31, by inserting a new section to read as follows:

"Section 1. On July 1, 1993, K.S.A. 1991 Supp. 19-430 is hereby amended to read as follows: 19-430. On ~~January 15, 1977,~~ *July 1, 1993,* and on July 1 of each fourth year thereafter, the board of county commissioners of each county shall by resolution appoint a county appraiser for such county who shall serve for a term of four years and until a successor is appointed. County appraisers appointed in counties having a population of more than 20,000 shall devote full time to the duties of such office but county appraisers appointed in counties having a population of 20,000 or less may be appointed either as a full-time or a part-time county appraiser as prescribed in the resolution providing for such appointment. No person shall be appointed or reappointed to or serve as county appraiser in any county under the provisions of this act unless such person shall have at least one year of appraisal experience and be qualified by the director of property valuation as an eligible Kansas appraiser under the provisions of this act. Whenever a vacancy shall occur in the office of county appraiser the board of county commissioners shall appoint an eligible Kansas appraiser to fill such vacancy for the unexpired term and until a successor is appointed. The person holding the office of county assessor or performing the duties thereof on the effective date of this act shall continue to hold such office and perform such duties until a county appraiser is appointed under the provisions of this act. *No person shall be appointed to the office of county appraiser or to fill a vacancy therein unless such person is currently certified or licensed pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto. Notwithstanding the foregoing provision, any person who holds the office of county appraiser upon the expiration of the term of such office shall be eligible for reappointment to such office regardless of whether such person is so certified or licensed.*";

Also on page 1, in line 32, after "2." by inserting "On January 1, 1993,";

On page 2, in line 40, after "3." by inserting "On January 1, 1993,";

On page 3, in line 37, after "4." by inserting "On January 1, 1993,"; in line 43, before "the" by inserting "for tax year 1993, and each year thereafter,";

On page 4, in line 5, by striking "and"; in line 7, before the period by inserting "; and (c) for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process, documented substantial and compelling reasons exist therefor and are provided by the county appraiser"; in line 29, after "5." by inserting "On January 1, 1993,";

On page 5, in line 2, after "6." by inserting "On January 1, 1993,";

On page 6, after line 38, by inserting a new paragraph to read as follows:

"The provisions of this section shall apply to all taxable years commencing after December 31, 1992.";

also on page 6, in line 39, after "8." by inserting "On January 1, 1993,";

On page 7, in line 17, after "9." by inserting "On January 1, 1993,"; in line 29, after "10." by inserting "On January 1, 1993,";

On page 8, in line 35, after "11." by inserting "On January 1, 1993,";

On page 9, in line 26, after "12." by inserting "On January 1, 1993,"; in line 41, after "13." by inserting "On January 1, 1993,";

On page 10, in line 20, by striking "2992" and inserting "1992";

On page 11, in line 29, after "15." by inserting "On January 1, 1993,";

On page 14, after line 8, by inserting five new sections to read as follows:

"New Sec. 16. (a) Whenever the aggregate amount of tax owed upon tangible personal property by any taxpayer is less than $5, such tax shall be cancelled and no personal property tax statement shall be issued.

(b) The provisions of this section shall apply to all taxable years commencing after December 31, 1991.

Sec. 17. K.S.A. 79-330 is hereby amended to read as follows: 79-330. In valuing for taxation, oil or gas properties consisting of one or more leases and oil or gas wells, there shall, in addition to the value of all oil- or gas-well material in or upon the leasehold properties, be made such valuation of the oil or gas wells as would make a reasonable and fair value of the whole property. Such portion of the valuation of the oil or gas wells as represents the lessor's interest, or royalty interest, therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease, together with the other property assessed in connection therewith. When the aggregate amount of tax owed by any taxpayer on any such royalty interest or royalty interests having a tax situs in the same taxing district is less than ~~two dollars~~ ~~($2)~~ *$5*, such tax shall be cancelled and the amount shall not be included on the personal property list. Upon the written request or consent submitted annually prior to April 1 by the owner of a gas lease where the gas is being delivered into interstate commerce, the entire valuation may be assessed to such owner.

Sec. 18. K.S.A. 1991 Supp. 79-1437c, as amended by section 1 of 1992 Senate Bill No. 598, is hereby amended to read as follows: 79-1437c. No deed or instrument providing for the transfer of title to real estate or affidavit of equitable interest in real estate shall be recorded in the office of the register of deeds unless such deed, instrument or affidavit shall be accompanied by a completed real estate sales validation questionnaire by the grantor or grantee concerning the property transferred. Such questionnaire shall not be filed of record by the register of deeds but shall be retained for a period of ~~two~~ *five* years at which time they shall be destroyed. The register of deeds shall in conjunction with the county clerk use the information derived from such questionnaires in ~~preparing the report to~~ *cooperating with and assisting* the

director of property valuation *in developing the information* as provided for in ~~K.S.A. 79-1436~~ *section 3 of 1992 Substitute for House Bill No. 2816*, and amendments thereto.

Sec. 19. K.S.A. 1991 Supp. 79-1437f is hereby amended to read as follows: 79-1437f. The contents of the real estate sales validation questionnaire shall be made available ~~to the county clerk for the purpose of preparing the report to the director of property valuation as provided for in K.S.A. 79-1436 and amendments thereto, any property owner who has appealed and for the sole purpose of prosecuting such appeal of the valuation of property pursuant to K.S.A. 79-1448, 79-1606, 79-1609, and 79-2005, and amendments thereto, or such owner's representative as evidenced by such owner's affidavit, and only to the extent of the contents of those certificates concerning the same constitutionally prescribed subclass of property as that of the property being appealed, the county appraiser and appraisers employed by the county for appraisal of property located within the county, appraisers licensed or certified pursuant to K.S.A. 58-4101 *et seq.*, and amendments thereto, and the board of county commissioners, but such contents shall not be otherwise disclosed by any party having access to anyone other than the director of property valuation, the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602, and amendments thereto, or to the board of tax appeals or county board of equalization in the event of proceedings before such boards, except that appraisers licensed or certified pursuant to K.S.A. 58-4101 *et seq.*, and amendments thereto, may consider and include such contents in an appraisal report.~~ *only to the following people for the purposes listed hereafter:*

(a) County officials for cooperating with and assisting the director of property valuation in developing the information as provided for in section 3 of 1992 Substitute for House Bill No. 2816, and amendments thereto;

(b) any property owner, or the owner's representative, for prosecuting an appeal of the valuation of such owner's property or for determining whether to make such an appeal, but access shall be limited to the contents of those questionnaires concerning the same constitutionally prescribed subclass of property as that of such owner's property;

(c) the county appraiser and appraisers employed by the county for the appraisal of property located within the county;

(d) appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, for appraisal of property and preparation of appraisal reports;

(e) financial institutions for conducting appraisals as required by federal and state regulators;

(f) the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602 or section 7, and amendments thereto, and the state board of tax appeals for conducting valuation appeal proceedings;

(g) the board of county commissioners for conducting any of the board's statutorily prescribed duties; and

(h) the director of property valuation for conducting any of the director's statutorily prescribed duties.

New Sec. 20. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) All oil leases, other than royalty interests therein, the average daily production from which is two barrels or less per producing well, or three barrels or less per producing well which has a completion depth of 2,000 feet or more.

(b) The provisions of this section shall apply to all taxable years commencing after December 31, 1991.";

Also on page 14, in line 9, by striking "16." and inserting "21. On January 1, 1993,"; also in line 9, by striking "79-306,"; in line 11, after "19-101a," by inserting "19-430,"; after line 12, by inserting a new section to read as follows:

"Sec. 22. K.S.A. 79-330 and K.S.A. 1991 Supp. 79-1437c as amended by section 1 of 1992 Senate Bill No. 598 and 79-1437f are hereby repealed."

Also on page 14, in line 13, by striking "17" and inserting "23"; in line 14, by striking "statute book" and inserting "Kansas register";

On page 1, in the title, in line 11, after the semicolon by inserting "providing for duties and qualifications of officials involved in such processes; exempting certain property therefrom;"; also in line 11, by striking "79-306" and inserting "79-330"; in line 13, after "19-101a," by inserting "19-430, 79-1437c as amended by section 1 of 1992 Senate Bill No. 598, 79-1437f,";

And your committee on conference recommends the adoption of this report.

JOAN WAGNON
BRUCE LARKIN
KEITH ROE
Conferees on part of House

DAN THIESSEN
AUDREY LANGWORTHY
PHIL MARTIN
Conferees on part of Senate

Senator Martin moved the Senate adopt the Conference Committee Report on **H. Sub. SB 8**.

Senator Hayden offered a substitute motion the Senate not adopt the Conference Committee Report on **H. Sub. SB 8** and a new conference committee be appointed.

The motion failed.

Senator Martin renewed his motion that the Senate adopt the Conference Committee report on **H. Sub. for SB 8**.

On roll call, the vote was: Yeas 29, nays 11; present and passing 0; absent or not voting 0.

Yeas: Bogina, Bond, Brady, Burke, Doyen, Ehrlich, Feleciano, Francisco, Gaines, Harder, Karr, D. Kerr, F. Kerr, Langworthy, Martin, Morris, Oleen, Parrish, Petty, Reilly, Rock, Salisbury, Sallee, Thiessen, Vidricksen, Walker, Webb, Winter, Yost.

Nays: Daniels, Frahm, Hayden, Kanan, Lee, McClure, Montgomery, Moran, Steineger, Strick, Ward.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT: Your committee on conference on Senate amendments to **HB 2835**, An act concerning school districts; relating to bonded indebtedness; establishing the school district capital improvements fund and providing for payments therefrom to school districts; amending K.S.A. 1991 Supp. 75-6704 and repealing the existing section, begs leave to submit the following report:

Your committee on conference agrees to disagree and recommends the appointment of a new conference committee;

And your committee on conference recommends the adoption of this report.

JOSEPH C. HARDER
SHEILA FRAHM
NANCY PARRISH
Conferees on part of Senate

RICK BOWDEN
KENT GLASSCOCK
BILL REARDON
Conferees on part of House

SESSION OF 1992

SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR SENATE BILL NO. 8

As Amended by House Committee of the Whole

Brief*

House Sub. S.B. 8 would make a number of major changes in the property tax appeals process, starting in tax year 1993. The bill would adjust dates within the local property tax calendar. Counties, except those with fewer than 10,000 parcels of real property, would be required to establish hearing officers or panels (HOP) which would replace county boards of equalization (BOE) for the purposes of hearing property tax appeals. A pilot "binding-arbitration" program would be established in four counties which would provide taxpayers aggrieved by their informal hearing decision an option in lieu of continuing on to the hearing officer or panel level.

Changes made in the property tax calendar are summarized below:

Real Property

	Current Law	H. Sub. S.B. 8
Mail Valuation Notice	April 1	March 1
Initial Appeal Deadline	21 days of mailing	April 15
Informal Hearing Last Day	May 1	May 15
Informal Final Value Set	May 5	May 20
Appraiser Certifies Values	March 31	June 15
Final County Hearing Last Day	June 15 (BOE)	July 1 (HOP)
Clerk Certifies Abstract	July 1	July 15

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* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

Personal Property

	Current Law	H. Sub. S.B. 8
File Rendition -- Corporations	April 1	March 15
File Rendition -- Others	March 1	March 15
Mail Valuation Notice	May 1	May 1
Initial Appeal Deadline	21 days of mailing	May 15
Informal Hearing Last Day	Unspecified	Unspecified
Informal Final Value Set	Unspecified	Unspecified
Appraiser Certifies Values	April 30	June 15
Final County Hearing Last Day	June 15 (BOE)	July 1 (HOP)
Clerk Certifies Abstract	July 1	July 15

County commissioners in all counties with 10,000 or more parcels would be required to appoint at least one hearing officer or panel for the purpose of hearing appeals by taxpayers continuing after the informal appeal with the county appraiser or appraiser's designee. (Current law allows counties the option of appointing hearing officers or panels.) All persons serving as hearing officers or on hearing panels would be required to be "qualified by virtue of experience and training in the field of property appraisal and property tax administration," subject to determination by the Director of Property Valuation (PVD), and would be required to complete a PVD training course. Although county commissioners themselves could serve on a hearing panel or as hearing officers, they also would be required to meet the requirements.

Under no circumstances would a county BOE meet to hear property tax appeals. In those counties with fewer than 10,000 parcels who elect not to establish HOPs, appeals would go directly from the informal level to the state board of tax appeals.

Counties, with the approval of the PVD Director, would be allowed to form joint "district" HOPs. Counties also would be required to fix salaries for members of HOPs and would be allowed to levy for the purpose of paying the salaries; however, such levies would not be exempt from the current tax lid.

A special "binding arbitration" pilot program would be established in Lyon, Ellis, Saline, and Shawnee counties, under which taxpayers could forego their rights to pursue an appeal to a HOP and instead go directly into arbitration after the informal appeal. Arbitrators would be required to be on an approved list maintained by the PVD Director of persons qualified by virtue of experience and training in the field of property appraisal and tax administration. If the property owner seeking arbitration and the county do not agree on a choice of an arbitrator from the approved list, the administrative judge of the judicial district in which the property is located would choose the arbitrator. Property owners could rescind a request for binding arbitration prior to the close of the 18-day period for making the request and provided the arbitration hearing had not already occurred. Persons entering into the arbitration process also would be prohibited from protesting their taxes on the issue of valuation later in the year pursuant to K.S.A. 1991 Supp. 79-2005. The pilot program would only remain in effect for tax years 1993 through 1995.

The bill also prohibits counties from using home-rule powers to remove themselves from the HOP and binding arbitration provisions in Sections 7 and 14 of the bill.

Background

The substitute bill resulted from the deliberations of a subcommittee of the House Taxation Committee. A number of the provisions were recommendations of the Governor's Task Force on Classification.

As passed by the Senate, S.B. 8 dealt in a similar, but not identical, manner with the property tax calendar, but it did not address binding arbitration, and it would have abolished HOPs, thus requiring all local appeals to go through BOEs.

The House Committee of the Whole amendment clarified when the request for binding arbitration could be withdrawn.

[As Amended by House Committee of the Whole]

Session of 1992

House Substitute for SENATE BILL No. 8

By Committee on Taxation

3-3

AN ACT relating to property taxation; concerning the administration and the process for appealing the classification and valuation of property for purposes thereof; amending K.S.A. 79-306, 79-332a, 79-1466, 79-1467, 79-1604, 79-1605, 79-1608, 79-1609 and 79-1610 and K.S.A. 1991 Supp. 19-101a, 79-1448, 79-1460 and 79-1606 and repealing the existing sections; also repealing K.S.A. 79-1601 and 79-1603 and K.S.A. 1991 Supp. 79-1602 and 79-1607.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-306 is hereby amended to read as follows: 79-306. On or before March ~~1~~ *15* of each year, or the next following business day if such date falls on a day other than a regular business day, every person, ~~except a corporation, domestic or foreign, in which case the filing date shall be on or before April 1, or the next following business day if such date falls on a day other than a regular business day,~~ *association, company or corporation* required by this act to list property shall make and sign a statement listing all tangible personal property which by this act such person is required to list, either as the owner thereof, or as parent, guardian, trustee, executor, administrator, receiver, accounting officer, partner or agent, as the case may be, and deliver the same to the county appraiser of the county where such property has its situs for the purpose of taxation.

Sec. 2. K.S.A. 79-332a is hereby amended to read as follows: 79-332a. (a) Any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas who fails to make and file a statement of assessment on or before ~~April 1~~ *March 15* shall be subject to a penalty as follows:

(1) If the statement of assessment is filed within 15 days following ~~April 1~~ *March 15*, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 10% thereto as a penalty for late filing.

(2) If the statement of assessment is filed more than 15 days but not more than 30 days following ~~April 1~~ *March 15*, the appraiser shall, after having ascertained the assessed value of the property of

such taxpayer, add 20% thereto as a penalty for late filing.

(3) If the statement of assessment is filed more than 30 days but not more than 45 days following ~~April 1~~ *March 15*, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 30% thereto as a penalty for late filing.

(4) If the statement of assessment is filed more than 45 days but not more than 60 days following ~~April 1~~ *March 15*, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 40% thereto as a penalty for late filing.

(5) If the statement of assessment is filed more than 60 days following ~~April 1~~ *March 15*, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 50% thereto as a penalty for late filing.

(6) If the statement of assessment is filed more than one year from March 15, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 100% thereto as a penalty for late filing.

(b) For good cause shown the county appraiser may extend the time in which to make and file such statement. Such request for extension of time shall be in writing and shall be received by the county appraiser prior to the due date of the statement of assessment.

(c) Whenever any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas shall fail to make and deliver to the county appraiser of every county wherein the property to be assessed is located, a full and complete statement of assessment relative to such property as required by blank forms prepared or approved for the purpose by the director of property valuation to elicit the information necessary to fix the valuation of the property, the appraiser shall ascertain the assessed value of the property of such taxpayer, and shall add 50% thereto as a penalty for failing to file such statement.

(d) The board of tax appeals shall have the authority to abate any penalty imposed under the provisions of this section and order the refund of the abated penalty, whenever excusable neglect on the part of the person, corporation or association required to make and file the statement of assessment 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.

Sec. 3. K.S.A. 1991 Supp. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or appraisal of the taxpayer's property by giving ~~notification of such dissatisfaction~~ *notice* to

the county appraiser ~~within 21 days of the mailing of the valuation notice~~ *on or before April 15 for real property and on or before May 15 for personal property*. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property. The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May ~~1~~ *15*, nor shall a final determination be given by the appraiser after May ~~5 of all years thereafter~~ *20*. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to ~~K.S.A. 79-1602~~ *section 7*, and amendments thereto, ~~or, only in cases where no hearing officer or panel has been appointed, to the county board of equalization in the same manner as appeals are made to such board under K.S.A. 79-1606, and amendments thereto,~~ and such hearing officer, *or* panel ~~or board~~, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided for in K.S.A. ~~79-1602 *et seq.*~~ *79-1606* and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the ~~county board of equalization in the same manner as appeals are made to such board under K.S.A. 79-1606, and amendments thereto. Each step in the county's established informal and formal appeal process must be completed before the taxpayer may appeal to the next level except as provided in K.S.A. 79-1609, and amendments thereto~~ *state board of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall be a condition precedent to an appeal to the county or district hearing panel.*

Sec. 4. K.S.A. 1991 Supp. 79-1460 is hereby amended to read as follows: 79-1460. The county appraiser shall notify each taxpayer in the county annually on or before ~~April~~ *March* 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of ~~any change in~~ the classification or appraised valuation of the taxpayer's property, except that~~, for tax year 1992, and each year thereafter,~~ the valuation for all real property shall

not be increased unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; and (b) a record of such inspection is maintained, including the documentation for such increase, and such record is available to the affected taxpayer. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk. Such notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. ~~In the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter,~~ Such notice shall *also* include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices sent in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. *Such notice shall also contain the uniform parcel identification number prescribed by the director of property valuation.* Such notice shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to *timely mail or* receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

Sec. 5. K.S.A. 79-1466 is hereby amended to read as follows: 79-1466. Commencing on January 1 of each year, the county appraiser shall transmit the taxable real property appraisals and the exempt real property appraisals to the county clerk continually upon the completion thereof.

Upon completion of transmission of such appraisals to the county clerk, on or before ~~the last business day of March~~ *June 15* of each year, the county appraiser shall deliver a document certifying that such appraisals constitute the complete appraisal rolls for real property.

The taxable real property appraisal roll shall consist of all property records which in aggregate list all taxable land and improvements located within the county.

The exempt real property appraisal roll shall consist of all property records which in aggregate list all exempt land and improvements

located within the county.

Sec. 6. K.S.A. 79-1467 is hereby amended to read as follows: 79-1467. Commencing on January 1 of each year, the county appraiser shall transmit the taxable personal property appraisals to the county clerk continually upon the completion thereof. Upon completion of transmission of such appraisals to the county clerk, on or before ~~the last business day of April~~ *June 15* each year, the county appraiser shall deliver a document certifying that such appraisals constitute the complete appraisal rolls for personal property except for personal property which may be subject to investigation and valuation pursuant to law or personal property which may have escaped appraisal in any year, in which cases the appraiser shall transmit to the clerk, upon completion, the appraisals of such property and the clerk shall add the same to the taxable personal property roll at such time.

The taxable personal property roll shall consist of all personal property forms rendered by taxpayers to the county appraiser, personal property forms completed by the appraiser in cases described in K.S.A. 79-1422, and amendments thereto, and cases involving escaped appraisal in any year and any other records prepared by the county appraiser for the listing and appraisal of taxable personal property located within the county.

The exempt personal property roll shall include all personal property that is exempt from ad valorem taxation except those specific types of property set forth in K.S.A. 79-201c and 79-201j and amendments to such sections. The exempt personal property roll shall consist of all exempt personal property forms rendered by taxpayers to the county appraiser and other records prepared by the county appraiser for the listing and appraisal of all exempt personal property within the county.

New Sec. 7. The board of county commissioners of each county having fewer than 10,000 parcels of real property may appoint and the board of county commissioner of each county having 10,000 parcels of real property or more shall appoint at least one hearing officer or county hearing panel of not fewer than three individuals to hear and determine appeals from the final determination of classification and appraised valuation of real or personal property by the county appraiser. The board of county commissioners, with the approval of the director of property valuation, may unite with the board of county commissioners of one or more counties to form a district for the purpose of appointing at least one hearing officer or district hearing panel of not fewer than three individuals. In any county wherein a hearing officer or county or district hearing panel

is not appointed pursuant to this section any appeal from the final determination of the county appraiser shall be filed directly with the state board of tax appeals as provided in K.S.A. 79-1609, and amendments thereto.

The board of county commissioners shall fix the salary to be paid the hearing officer or each member of the county hearing panel. In the case of a district hearing officer or district hearing panel, the salary to be paid shall be fixed by joint resolution by the boards of county commissioners published in the official county newspaper of each county. The board of county commissioners of each county is hereby authorized to levy a tax upon all taxable tangible property in the county in an amount necessary to pay all costs incurred in complying with this section and section 14.

No person may serve as a hearing officer or on a county or district hearing panel who is not qualified by virtue of experience and training in the field of property appraisal and property tax administration, such qualifications to be determined by the director of property valuation who shall prescribe guidelines governing the duties of the hearing officers or county and district hearing panels. Each hearing officer and member of a county or district hearing panel shall attend and complete a training program conducted by the director of property valuation or the director's designee. Any person who has performed an appraisal of any property the appraised valuation of which is appealed to a hearing officer or the county or district hearing panel shall not hear such appeal and may not participate in any deliberations on such appeal. The board of county commissioners, or individual members thereof, may serve as a hearing officer or as members of the county or district hearing panel provided they meet the foregoing requirements.

Whenever the director of property valuation shall conclude that any person appointed as a hearing officer or to a county or district hearing panel has failed or neglected to discharge such person's duties as required by law and that the interest of the public will be promoted by the removal of such person, the director of property valuation shall issue an order suspending or terminating such person as a hearing officer or member of the hearing panel in the same manner and subject to the same conditions provided in subsection (b) of K.S.A. 19-431, and amendments thereto.

Sec. 8. K.S.A. 79-1604 is hereby amended to read as follows: 79-1604. ~~The county clerk,~~ Immediately after the ~~board of equalization shall have completed its labors,~~ *completion of the labors of the hearing officer or county or district hearing panel, the county clerk* shall prepare an abstract of the assessment rolls of ~~his or her~~

the county and forward it to the director of property valuation on or before ~~the 1st day of~~ July *15*. Said abstract shall be made ~~upon forms prepared and furnished~~ *in the form prescribed* by the director of property valuation and shall give the information asked by the director of property valuation under the various subjects fully and completely as required. *The director shall have authority to prescribe a statewide database format.* The abstract on motor vehicles will include only those motor vehicles assessed as of the date the abstract is prepared previous to mailing to the director of ~~the~~ property valuation ~~department~~. Any motor vehicles acquired, purchased, traded or sold during the time the abstract is being prepared and until September 1, will be assessed and added or subtracted from the original assessment allowing an additional valuation to the abstracted figure on motor vehicles. After the levy is set according to law, valuations of motor vehicles would be credited as supplementary assessments are now credited.

Sec. 9. K.S.A. 79-1605 is hereby amended to read as follows: 79-1605. If any county clerk shall refuse or neglect to *properly* prepare an abstract of the assessment roll of ~~his or her~~ *the* county and forward the same to the director of property valuation, as required by law, he or she shall forfeit to the state the sum of ~~one~~ *five* hundred dollars, to be recovered in the name of the county commissioners by civil action before any court of competent jurisdiction; and the *verified* certificate of the director of property valuation~~, authenticated by the official seal of the director of property valuation,~~ setting forth the failure of the clerk to comply with the provisions of said section, shall be prima facie evidence of such refusal or neglect, on the trial of such action.

Sec. 10. K.S.A. 1991 Supp. 79-1606 is hereby amended to read as follows: 79-1606. *(a)* The ~~hearing officers or panels or the county board of equalization in each county~~ *county appraiser, hearing officer or panel and arbitrator* shall adopt, use and maintain the following records, the form and method of use of which shall be prescribed by the director of property valuation: ~~(a)~~ *(1)* Appeal form, ~~(b)~~ *(2)* hearing docket, and ~~(c)~~ *(3)* record of cases, including the disposition thereof.

(b) The county clerk shall furnish appeal forms to any ~~owner of property which has been appraised~~ *taxpayer* who desires to ~~further appeal to the hearing officers or panels or the county board of equalization as to the classification, appraised valuation, assessment or assessment equalization of property by the county appraiser~~ *appeal the final determination of the county appraiser as provided in K.S.A. 79-1448, and amendments thereto*. Any such

appeal in writing ~~involving the classification, appraised valuation, assessment or assessment equalization of property~~ must be filed with the county clerk within 18 days of the date that ~~a notice of change in value or~~ *the* final determination of the appraiser~~, hearing officer or panel or board of equalization~~ was mailed to the taxpayer~~, except as provided in K.S.A. 79-1609, and amendments thereto~~.

(c) The hearing officer or panel shall hear and determine any appeal made by any taxpayer or such taxpayer's agent or attorney. All such hearings shall be held in a suitable place in the county or district. Sufficient evening and Saturday hearings shall be provided as shall be necessary to hear all parties making requests for hearings at such times.

(d) Every appeal so filed shall be set for hearing by the ~~hearing officers or panels or the county board of equalization~~ *hearing officer or panel,* which hearing ~~must~~ *shall* be held on or before ~~May 25, 1990, and May 15 of all years thereafter, if heard by a hearing officer or panel, and June 8, 1990, and May 30 of all years thereafter, if heard by a county board of equalization~~ *July 1, and the hearing officer or panel shall have no authority to be in session thereafter, except as provided in K.S.A. 79-1404, and amendments thereto*. The county clerk shall notify each appellant and the county appraiser of the date for hearing of the taxpayer's appeal at least 10 days in advance of such hearing. Every such appeal shall be determined by order of the hearing officer or panel ~~or the county board of equalization~~, and such order shall be recorded in the minutes of such *hearing* officer~~,~~ *or* panel ~~or board~~ on or before ~~May 25, 1990, and May 15 of all years thereafter, if heard by a hearing officer or panel, and June 8, 1990, and May 30 of all years thereafter, if heard by a county board of equalization~~ *July 5*. Such recorded orders and minutes shall be open to public inspection. Notice as to disposition of the appeal shall be mailed by the county clerk to the taxpayer and the county appraiser within five days after the determination.

Sec. 11. K.S.A. 79-1608 is hereby amended to read as follows: 79-1608. The board of county commissioners of any county by resolution is hereby authorized and empowered to transfer at the close of any budget year all or any part of the balance of the money in the county general fund, and subject to legal expenditure in such year, to a special ~~assessment equalization~~ *appraisal* fund. Upon the adoption of such resolution, a copy thereof shall be delivered to the county treasurer and the treasurer shall credit the amount provided in such resolution to such special fund and shall debit the

general fund.

Such transfers may be made notwithstanding the provisions of K.S.A. 79-2925 to 79-2937, and amendments thereto. All moneys credited to such special fund shall be used by the county for the purpose of *assuring that all property in the county is classified and appraised according to law and for the purpose of the* employment of or contracting for ~~assistants, hearing officers or panels to aid the county board of equalization in the performance of its duties or to make appraisals of all or any part of the properties in such county for the purpose of aiding the board in assessment equalization~~ *appraisal assistance, hearing officers or panels and arbitrators*. Such special ~~assessment equalization~~ *appraisal* fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, and amendments thereto, except that in making the budgets of such counties the amounts credited to, and the amount on hand in such special fund, and the amount expended therefrom shall be shown thereon for the information of the taxpayers of the county.

If the board of county commissioners shall determine at any time that all or any part of the money which has been transferred to such special fund is not needed for the purposes for which so transferred, the board of county commissioners is hereby authorized and empowered by resolution to retransfer such amount not needed to the general fund of the county, and such retransfer and expenditure thereof shall be subject to the provisions of K.S.A. 79-2925 to 79-2937, and amendments thereto.

Sec. 12. K.S.A. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the ~~county board of equalization~~ *hearing officer or panel* may appeal to the state board of tax appeals by filing a written notice of appeal, on forms approved by the state board of tax appeals and provided by the county ~~board of equalization~~ *clerk* for such purpose, stating the grounds thereof and a description of any comparable property or properties and the ~~assessment~~ *appraisal* thereof upon which they rely as evidence of inequality of ~~assessment~~ *the appraisal* of their property, if that be a ground of the appeal, with the board of tax appeals and by filing a copy thereof with the *county* clerk ~~of the county board of equalization~~ within ~~45~~ *30* days after the date of the order from which the appeal is taken. A county *or district* appraiser may appeal to the state board of tax appeals from any order of the ~~county board of equalization~~ *hearing officer or panel.*

Sec. 13. K.S.A. 79-1610 is hereby amended to read as follows: 79-1610. Notice of the decision of the hearing officer or panel ~~or the board of equalization~~ on any appeal shall be mailed to the

taxpayer and the county appraiser within five days after the date of the making of such decision or the date of approval of the director of property valuation, whichever occurs later. Notice of all changes of classification or valuation of property, including the justification for such changes, shall, within five days, be mailed to the director of property valuation pursuant to K.S.A. ~~1987 Supp.~~ 79-1481, and amendments thereto, if such change constitutes the final decision of the county. Any appeal duly perfected not heard by the ~~board~~ *hearing officer or panel* on or before the date of final adjournment of the ~~board~~ *hearing officer or panel*, shall be deemed to have been denied as of the date of final adjournment and the ~~board~~ *hearing officer or panel* shall mail a notice of such denial to the taxpayer within five days after the date of such final adjournment.

New Sec. 14. A binding arbitration process is hereby established in Lyon, Ellis, Saline and Shawnee counties. The director of property valuation shall develop a list of persons qualified by virtue of experience and training in the field of property appraisal and tax administration to act as arbitrators of property valuation disputes. The board of county commissioners of such counties shall, on or before August 25, 2992, and on or before August 25 of each ensuing year, by resolution fix the salary to be paid each arbitrator who shall serve in such county and notify the director of property valuation of the amount thereof. The state shall assume a portion of the cost of such arbitration process in accordance with appropriation acts of the legislature.

The county clerk shall furnish an arbitration request form together with a statement of explanation of the consequences of a request for binding arbitration to any property owner who desires to submit the final determination of classification or appraised valuation by the county appraiser to binding arbitration. Such form and statement shall be prescribed by the director of property valuation. The arbitration request form shall be completed and filed with the county clerk within 18 days of the date that a final determination of classification or appraised valuation was mailed to the property owner as provided in K.S.A. 79-1448, and amendments thereto. The property owner may rescind such request by notifying the county clerk prior to the expiration of such 18-day period **[provided that no hearing has already been conducted thereon]**, and in such case, the date upon which such notice was received by the county clerk shall be deemed to be the date that an appeal was made to a hearing officer or panel pursuant to K.S.A. 79-1606, and amendments thereto. A request for binding arbitration shall be in lieu of an appeal to the hearing officer or panel as provided in K.S.A. 79-1606, and

amendments thereto.

Every request for binding arbitration shall be promptly set for hearing by the county clerk. The property owner and the board of county commissioners shall select an arbitrator to conduct the hearing from the list prepared by the director of property valuation. In the absence of agreement by the property owner and the board of county commissioners, the administrative judge of the judicial district in which the property is located shall select the arbitrator from the list. All such hearings shall be completed on or before the last business day in June. The county clerk shall notify the property owner and the county appraiser of the date for hearing at least 10 days in advance of such hearing. Every request for arbitration shall be determined by order of the arbitrator on or before July 5, and the arbitrator shall have no authority to be in session thereafter. Such order may affirm the final determination of the county appraiser, adopt the contentions of the property owner or make any other decision supported by the preponderance of the evidence submitted. Such recorded orders shall be open to public inspection. Notice of the decision of the arbitrator shall be mailed by the county clerk to the property owner and the county appraiser within 15 days of the hearing. The decision of the arbitrator shall be final and not subject to appeal, and the property owner shall be precluded from protesting the valuation of the same property pursuant to K.S.A. 79-2005, and amendments thereto.

The director of property valuation shall prescribe guidelines governing the duties of arbitrators under this section.

The provisions of this section shall apply to all taxable years commencing after December 31, 1992, through December 31, 1995.

Sec. 15. K.S.A. 1991 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions: (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 to 19-4625, inclusive, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 to 12-1,109, inclusive, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto. Any charter resolution adopted by a county prior to July 1, 1983, exempting from or effecting changes in K.S.A. 19-430, and amendments thereto, is null and void.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto. Any charter resolution adopted by a county, prior to the effective date of this act, exempting from or effecting changes in K.S.A. 13-13a26, and amendments thereto, is null and void.

(17) Counties may not exempt from or effect changes in K.S.A. 71-301, and amendments thereto. Any charter resolution adopted by a county, prior to the effective date of this act, exempting from or effecting changes in K.S.A. 71-301, and amendments thereto, is null and void.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto. Any charter resolution adopted by a county prior to the effective date of this act, exempting from or effecting changes in such sections is null and void.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225 and 12-1226 and K.S.A. 1989 Supp. 12-1225a, 12-1225b and 12-1225c, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 19-2920, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(25) Counties may not exempt from or effect changes in section 7, and amendments thereto.

(26) Counties may not exempt from or effect changes in section 14, and amendments thereto.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of

the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

Sec. 16. K.S.A. 79-306, 79-332a, 79-1466, 79-1467, 79-1601, 79-1603, 79-1604, 79-1605, 79-1608, 79-1609 and 79-1610 and K.S.A. 1991 Supp. 19-101a, 79-1448, 79-1460, 79-1602, 79-1606 and 79-1607 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1992

HOUSE BILL No. 2811

By Representative Johnson

1-30

AN ACT relating to property taxation; concerning real property valuation increases; amending K.S.A. 1991 Supp. 79-1460 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 79-1460 is hereby amended to read as follows: 79-1460. The county appraiser shall notify each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or appraised valuation of the taxpayer's property, except that, for tax year 1992, and each year thereafter, the valuation for all real property shall not be increased unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; ~~and~~ (b) a record of such inspection is maintained, including the documentation for such increase, and such record is available to the affected taxpayer*; and (c) with respect to any real property the valuation for which has been finally determined pursuant to the valuation appeals process, documented substantial and compelling reasons therefor exist and are provided by the county appraiser*. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk. Such notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. In the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter, such notice shall include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices sent in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. Such notice

shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

Sec. 2. K.S.A. 1991 Supp. 79-1460 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2811

As Amended by House Committee on Taxation

Brief*

H.B. 2811, as amended, would, for the next following year, prohibit counties from increasing the valuation of real property for which the value had been reduced through the appeals process unless the counties were able to provide a "preponderance" of evidence to substantiate the proposed increases.

The bill would apply to all tax years beginning with tax year 1992.

Background

The original bill would have prevented counties from EVER increasing the valuation of ALL real property for which the valuation had been determined pursuant to the appeals process unless "documented substantial and compelling reasons" were provided by the counties.

The House Committee, based upon a subcommittee's recommendation, amended the bill to make it clear that the shift in the burden of proof to the county prior to any increase in value is for one year at a time only; to require that the property had to have its value REDUCED by the appeals process; and to change the burden of proof language from "documented substantial and compelling reasons" to a "preponderance of evidence."

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* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

Session of 1992

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AN ACT relating to property taxation; concerning real property valuation increases; amending K.S.A. 1991 Supp. 79-1460 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 79-1460 is hereby amended to read as follows: 79-1460. The county appraiser shall notify each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or appraised valuation of the taxpayer's property, except that, for tax year 1992, and each year thereafter, the valuation for all real property shall not be increased unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; ~~and~~ (b) a record of such inspection is maintained, including the documentation for such increase, and such record is available to the affected taxpayer; *and (c)* ~~*with respect to any real property the valuation for which has been finally determined pursuant to the valuation appeals process, documented substantial and compelling reasons therefor exist and are provided by the county*~~ **for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process, a preponderance of the evidence exists therefor, and is provided by the county** *appraiser*. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk. Such notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. In the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter, such

notice shall include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices sent in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. Such notice shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

Sec. 2. K.S.A. 1991 Supp. 79-1460 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2811

As Amended by House Committee of the Whole

Brief*

H.B. 2811, as amended, would, for the next following year, prohibit counties from increasing the valuation of real property for which the value had been reduced through the appeals process unless "documented substantial and compelling reasons" were provided to substantiate the proposed increases.

The bill would apply to all tax years beginning with tax year 1992.

Background

The original bill would have prevented counties from EVER increasing the valuation of ALL real property for which the valuation had been determined pursuant to the appeals process unless "documented substantial and compelling reasons" were provided by the counties.

The House Taxation Committee, based upon a subcommittee's recommendation, amended the bill to make it clear that the shift in the burden of proof to the county prior to any increase in value is for one year at a time only; to require that the property had to have its value REDUCED by the appeals process; and to change the burden of proof language from "documented substantial and compelling reasons" to a "preponderance of evidence."

The House Committee of the Whole amended the bill to reinsert the original burden of proof language ("documented substantial and compelling reasons").

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* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1992

HOUSE BILL No. 2811

By Representative Johnson

1-30

AN ACT relating to property taxation; concerning real property valuation increases; amending K.S.A. 1991 Supp. 79-1460 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 79-1460 is hereby amended to read as follows: 79-1460. The county appraiser shall notify each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or appraised valuation of the taxpayer's property, except that, for tax year 1992, and each year thereafter, the valuation for all real property shall not be increased unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; ~~and~~ (b) a record of such inspection is maintained, including the documentation for such increase, and such record is available to the affected taxpayer; *and (c)* ~~*with respect to any real property the valuation for which has been finally determined pursuant to the valuation appeals process, documented substantial and compelling reasons therefor exist and are provided by the county*~~ **for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process,** ~~**a preponderance of the evidence exists therefor, and is**~~ **[documented substantial and compelling reasons exist therefor and are] provided by the county** *appraiser*. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk. Such notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. In

the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter, such notice shall include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices sent in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. Such notice shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

Sec. 2. K.S.A. 1991 Supp. 79-1460 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2811

As Amended by Senate Committee on Assessment and Taxation

Brief*

H.B. 2811, as amended, would, for the next following year, prohibit counties from increasing the valuation of real property for which the value had been reduced through the appeals process unless "documented substantial and compelling reasons" were provided to substantiate the proposed increases.

The bill would apply to all tax years beginning with tax year 1993.

Background

The original bill would have prevented counties from EVER increasing the valuation of ALL real property for which the valuation had been determined pursuant to the appeals process unless "documented substantial and compelling reasons" were provided by the counties.

The House Taxation Committee, based upon a subcommittee's recommendation, amended the bill to make it clear that the shift in the burden of proof to the county prior to any increase in value is for one year at a time only; to require that the property had to have its value REDUCED by the appeals process; and to change the burden of proof language from "documented substantial and compelling reasons" to a "preponderance of evidence."

The House Committee of the Whole amended the bill to reinsert the original burden of proof language ("documented substantial and compelling reasons").

The Senate Committee amended the bill to make it effective starting in tax year 1993.

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* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

As Amended by Senate Committee

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1992

HOUSE BILL No. 2811

By Representative Johnson

1-30

AN ACT relating to property taxation; concerning real property valuation increases; amending K.S.A. 1991 Supp. 79-1460 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 79-1460 is hereby amended to read as follows: 79-1460. The county appraiser shall notify each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or appraised valuation of the taxpayer's property, except that, for tax year ~~1992~~ *1993*, and each year thereafter, the valuation for all real property shall not be increased unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; ~~and~~ (b) a record of such inspection is maintained, including the documentation for such increase, and such record is available to the affected taxpayer; *and (c)* ~~*with respect to any real property the valuation for which has been finally determined pursuant to the valuation appeals process, documented substantial and compelling reasons therefor exist and are provided by the county*~~ **for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process,** ~~**a preponderance of the evidence exists therefor, and is**~~ **[documented substantial and compelling reasons exist therefor and are] provided by the county** *appraiser*. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of

deeds or county clerk. Such notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. In the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter, such notice shall include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices sent in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. Such notice shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

Sec. 2. K.S.A. 1991 Supp. 79-1460 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1992

HOUSE BILL No. 2812

By Committee on Taxation

1-30

AN ACT concerning property taxation; authorizing the director of property valuation to order the withholding of certain county entitlements for noncompliance with property tax administration laws.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The director of property valuation shall order the state treasurer to withhold all or a portion of funds appropriated by the legislature pursuant to K.S.A. 79-1478, and amendments thereto, and all or a portion of a county's entitlement to moneys from either or both of the local ad valorem tax reduction fund and the city and county revenue sharing fund upon a finding by the director that a county is not in compliance with statutes, rules and regulations or directives governing property taxation. The order of the director shall be served on the county as provided in K.S.A. 60-304, and amendments thereto. Any county aggrieved by such order may appeal to the state board of tax appeals as provided in K.S.A. 74-2438, and amendments thereto.

Unless the funds withheld under this section are restored by the state board of tax appeals as a result of an appeal by the county as provided in K.S.A. 74-2438, and amendments thereto, such funds shall be deposited in a special training fund to be utilized by the director of property valuation to correct the problem resulting in the withholding of the funds and to provide training for county officials.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved _____

Minutes of the House Committee on Taxation. The meeting was called to order by Joan Wagnon, Chairperson, at 9:10 a.m. on Thursday, February 6, 1992 in room 519-S of the Capitol.

All members were present except:

Rep. Ken Grotewiel, excused.

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research; Bill Edds and Don Hayward, Revisors; Linda Frey, Committee Secretary Douglas E. Johnston, Committee Assistant.

Conferees appearing before the committee:

Larry Clark, Wyandotte County Appraiser
Representative Mary Jane Johnson
Vic Miller, Shawnee County tax attorney
David Cunningham, Director of Property Valuation
Bev Bradley, Deputy Director of the Kansas Assoc. of Counties
Representative Marvin Smith
Representative Alex Scott
Dana Hummer, Topeka taxpayer
Paul Rodvelt, Horton property owner
Joe Conley, Delia property owner
Bernard Barr, Topeka property owner
Larry Fischer, representing Kansans for Fair Taxation
Dan Cain, Shawnee County property owner

Hearings were opened on HB 2813, HB 2820, HB 2811, HB 2812 and HB 2768.

Larry Clark, Wyandotte County Appraiser, discussed HB 2811 (Attachment 1). As a representative of the Kansas County Appraisers Association, Clark discussed HB 2813. He said the association favored permanent appointment of county appraisers. In regard to HB 2820, he said the association favored the bill. Clark had no comment on HB 2812.

Rep. Vancrum said the terms "substantial and compelling" in HB 2812 would give county appraisers too much lattitude in the determination of what the changes in fair market values were from year to year, but that such changes were rare. Clark agreed. He also said appraisers should not change values simply because values were changed on a computer.

Rep. Krehbiel stated that in some counties it is not a rare occurrence that changes are made based on an appraisers determination of fair market value change.

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No. 114,827
Respondents' Brief
EXHIBIT 2 E

Rep. Mary Jane Johnson testified in favor of HB 2812 (Attachment 2).

Rep. Johnson said rules and regulations could be established which would define "substantial and compelling."

Vic Miller, Shawnee County tax attorney, testified in regard to HB 2811 (Attachment 3). He said that after an appeal the burden of proof should lie with the county to determine fair market value. He spoke against leaving the responsibility to PVD to set up rules and regulations that would establish what "substantial and compelling" means. He said that would not be necessary if the burden of proof were put on the county appraiser where values have been determined on appeal. Miller said he was not opposed to establishing statutory criteria determining the definition, but that HB 2811 did not do that.

Miller testified in regard to HB 2820. He said the bill would do what the PVD already does. He discussed a sample of preliminary ratio study reports from several unnamed counties (Attachment 4).

David Cunningham, Director of Property Valuation, discussed HB 2820 and HB 2812 (Attachment 5). He said HB 2812 was necessary because the PVD did not have the enforcement authority to get uncoorperative counties to follow PVD directives. Currently the department's authority is insufficient.

Cunningham said current law gives his department the authority to audit counties and that that was currently being done. He said HB 2820 was not really necessary for that reason.

Bev Bradley, Deputy Director of the Kansas Association of Counties, testified against HB 2812 (Attachment 6).

Cunningham said the special fund could be used to do the work of a county not in compliance or to educate the county appraisers so that they will comply.

Rep. Marvin Smith testified in favor of HB 2768 (Attachment 7). Rep. Smith described the property tax problems of one of his constituents. He said the constituent had appealed the values on two of his properties. One of those appeals was successful, but half of the $2,200 saved in property taxes after the appeal was taken by the consitiuent's consultant as a fee.

Rep. Alex Scott testified in favor of HB 2768 (Attachment 8).

Dana Hummer, Topeka taxpayer, testified in favor of HB 2768

(Attachment 9). He included with his testimony tax documents for his property owned in Topeka for which he appealed the valuation. He asked the committee to act to cut the interest rate on delinquent taxes from 18 percent to 1% above the prime rate.

There were several questions regarding Hummer's property tax problems and whether or not his problems were solely symptomatic of high mill levies or high valuations. In response to questions, Hummer said he had considered selling the property.

Paul Rodvelt, Horton property owner, testified in favor of HB 2768 (Attachment 10).

Joe Conley, Delia property owner, testified in favor of HB 2768.

Bernard Barr, Topeka property owner, testified in favor of HB 2768 (Attachment 11).

Larry Fischer, representing Citizens for Fair Taxation, testified in favor of HB 2768 (Attachment 12).

Dan Cain, Shawnee County property owner, testified in favor of HB 2768. He related his property tax problems to the committee.

The public hearings on HB 2813, HB 2820, HB 2811, HB 2812 and HB 2768 were closed.

The chair requested and received unanimous consent for the introduction of a bill for a statewide uniform mill levy.

The meeting adjourned at 10:55 a.m. The next meeting will be February 7.

KANSAS COUNTY APPRAISERS ASSOCIATION
P.O. Box 1714
Topeka, Kansas 66601

To: House Taxation Committee

From: Larry Clark, Wyandotte County Appraiser

Date: February 6, 1992

Madame Chairperson and honorable members of this committee I appreciate the opportunity to offer testimony on the bills listed below.

My name is Larry Clark and I am here representing the Kansas County Appraisers Association as their president. Our executive board met briefly January 29 to discuss many of the proposals discussed below. I will deal with them as shown on the committee calendar.

House Bill 2768 - Appraisal of property at fair market value assumes a point in time. For ad valorem property tax purposes that has always been January 1 of the tax year. To fix a value for more than one year ignores the fact of change in the market and therefore violates the requirement to appraise at fair market value. For that reason the Kansas County Appraisers Association opposes this legislation.

House Bill 2811 - The appraisers association questions the term "substantial and compelling". We are required as a part of the annual review of

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property values to examine the real estate market for any changes and to adapt to them. If that study produces reasons to change values, that, in the minds of most county appraisers, is substantial and compelling. If county appraisers are allowed to make changes consistent with the market under this legislation we will support it.

If, on the other hand, the term "substantial and compelling" is used to hold values to a some figure established in a hearing, even it was done in error, we strongly oppose it on the grounds that it subverts the standard of fair market value.

House Bill 2813 - This bill appears to eliminate the four year appointment process currently in effect and call for the appointment of full time appraisers in counties having more than 10,000 parcels. The appraisers' association supports the idea of appointment without a term of years. This would require the county commission to show cause for terminating the employment of an appraiser as opposed to the current situation of the position essentially being vacated every four years.

Our association would extend the second provision to require a full time appraiser in all counties regardless of size. It is one thing to have one appraiser serving two counties, which would result in effectively serving each individual county on a part time basis. It is entirely different for one person to hold two or more entirely separate jobs and expect either to be performed adequately.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
TELECOPIER 296-6296

October 29, 1991

ATTORNEY GENERAL OPINION NO. 91- 134

The Honorable Clyde D. Graeber
State Representative, Forty-First District
2400 Kingman
Leavenworth, Kansas 66048-4230

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Powers and Duties of Director of Property Valuation; Force and Effect of Directives

Synopsis: The July 2, 1990 directive issued by the director of property valuation that requires county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value and use value for tax year 1991 is binding on all county appraisers. The "final result" is the value reached at the last step taken in the processes. In order to alter the value of property, the value of which was set in the 1989 or 1990 hearing and appeal process, the county appraiser must have documented substantial and compelling reasons to prove the altered value reflects current fair market or use value. Cited herein: K.S.A. 79-1401; 79-1404, as amended by L. 1991, ch. 278, § 1; K.S.A. 79-1456; K.S.A. 1990 Supp. 79-1476.

* * *

Dear Representative Graeber:

By letter dated July 17, 1991, this office brought to your attention the existence of a directive issued by the director

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of property valuation to all county boards of equalization and all county appraisers. The directive, dated July 2, 1990, directs local officials to take into consideration the values reached through the previous years' appeals processes when estimating fair market value or use value for tax year 1991. You ask that we address this directive in a formal opinion, and that we respond to the following questions:

"1. Does the July 2, 1990, PVD Directive requiring 'due deference' to the final results of the 1989/1990 hearing and appeals process except where substantial and compelling reasons to deviate therefrom are demonstrated, apply not only to those values determined by the Board of Tax Appeals, but also to those values established at both the informal hearing and board of equalization levels of appeal?

"2. Absent substantial and compelling reasons to deviate therefrom, may a county increase the valuation when that property's value for the prior year had been determined at either the informal or the county board of equalization hearing levels?

"3. How is the phrase 'substantial and compelling reasons' defined and applied in the context of determining whether due deference shall be given to the final results of the hearing and appeals process in regard to the fair market value of property?"

The July 2, 1990 directive states in part:

> "Except for land devoted to agricultural use and a few other exceptions, real property in Kansas is required to be valued at its 'fair market value,' which is defined in K.S.A. 79-503a as 'the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming the parties are acting without undue compulsion.' K.S.A. 79-503a further provides that sales shall not be used as the sole criteria of 'fair market value,' but that other factors shall be considered in finding 'fair market value.' Therefore, in my opinion, due deference should be given to the final results of the 1989/1990 hearing

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> and appeals process in finding 'fair market value' or 'use value.' The presumption is that these final results represent the 'fair market value' or 'use value' of the property. . . .
>
> "County appraisers are directed to carefully analyze the final results of the hearing and appeals processes for both tax years 1989 and 1990 in estimating 'fair market value' and 'use value' for tax year 1991. Only when substantial and compelling reasons to deviate from such 1989 and 1990 final values have been documented should such value be increased for tax year 1991."

The directive does not distinguish between results of a hearing before the board of tax appeals and results of an informal hearing with the county appraiser, or of an appeal at any other stage. The results at any stage will be considered "final" if not timely appealed further. Also, it is the goal at each stage to achieve fair market value (or use value for land devoted to an agricultural use), so the presumption is that at any of the stages the result, if final, represents fair market value or use value.

By your second question, you essentially ask whether county appraisers may ignore the directive or if it is binding on them. Several statutes give the director of property valuation the power to direct county and district appraisers. K.S.A. 79-1401 provides that "[t]he director of property valuation shall have general supervision and direction of the county assessor's in the performance of their duties and shall regulate and supervise the due performance thereof." (Emphasis added.) The director has the power and authority to exercise general supervision over county and district appraisers to the end of uniform assessments at fair market value; "to require all county and district appraisers . . . under penalty of forfeiture and removal from office" to assess at fair market value; "[t]o confer with, advise and direct county and district appraisers . . . as to their duties under the statutes of the state"; and "to make any order or direction to . . . any county or district appraiser as to the valuation of any property. . . ." K.S.A. 79-1404, as amended by L. 1991, ch. 278, § 1 (emphasis added). K.S.A. 79-1456 requires county appraisers to "follow the policies, procedures and guidelines of the director of property

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valuation in the performance of the duties of the office of county appraiser." K.S.A. 79-1458 and 79-1404 First as amended, require county and district appraisers to maintain all data relating to appraisal of property as may be required by the director. In Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12 (1969), the Kansas Supreme Court stated:

> "The director of property valuation is an administrative official and his decisions in all matters within the scope of his supervisory power, involving administrative judgment and discretion, are conclusive upon subordinate taxing officials. In the exercise of his powers, the director must of necessity interpret the tax laws and such interpretations are prima facie binding."

See also McManaman v. Board of County Commissioners, 205 Kan. 118, 126, 127 (1970).

Based on the above-cited authorities, it is our opinion that county and district appraisers are bound to follow a directive of the director of property valuation when the directive is issued to assist the appraisers in determining fair market or use value or performing any of their other duties. The July 2, 1990 directive in question specifically addresses determination of fair market or use value for properties which have gone through the hearing and/or appeals processes in 1989 or 1990. Further the directive mandates the maintenance of data by appraisers in that it requires them to document adjustments. Since these are areas within the director's scope of authority, we believe the directive in question is binding on county and district appraisers.

Finally, you seek our interpretation of the phrase "substantial and compelling reasons" in the context of determining whether the final results of a previous year's hearing and appeals process may be altered by the county appraiser. We believe the intent of this language was to place on the county appraiser the burden of documenting and proving that the value assigned a piece of property through a prior year's hearing or appeals process is not its current fair market or use value. This interpretation takes into account the county appraiser's duty to update appraisals on an annual basis (K.S.A. 1990 Supp. 79-1476), but at the same time requires the appraiser to account for any change in value. The reasons given for altering the value from that reached in

the appeals process must be compelling; the presumption is that the values finally arrived at in the hearing and appeals processes were the fair market or use values in that those were the values agreed to be such by the taxpayer and the government officials charged with the responsibility of setting such values. However, if the appraiser can in specific instances prove by demonstrative evidence that fair market value was not achieved through the processes or that changes have occurred in the property or the market, the value can be altered. Such analysis and documentation must occur prior to issuance of a change of value notice, the point being that the appraiser should not be changing the value of such property without having demonstrable reasons for doing so.

In conclusion, the July 2, 1990 directive issued by the director of property valuation that requires county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value and use value for tax year 1991 is binding on all county appraisers. The "final result" is the value reached at the last step taken in those processes. In order to alter the value of property, the value of which was set in the 1989 or 1990 hearing and appeal process, the county appraiser must have documented substantial and compelling reasons to prove the altered value reflects current fair market or use value.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller

Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

2-5

Testimony Before the House Tax Committee
February 6, 1992

Madam Chairman,

My name is Vic Miller; you know me. While I am in agreement with what I believe to be the intention of House Bill 2811, I am opposed to the bill as presently worded. The language "documented substantial and compelling reasons", without definition, does nothing but to perpetuate the legal quagmire begun a couple of years ago by a previous Property Valuation Division director. A directive was issued without citation to any case or statute and without any clarification as to the meaning of the words.

Since then, there has been a grand debate as to what is meant by the phrase, but I have yet to see any clarity provided by the authorities charged with doing so. Meanwhile, the system stalls while everyone argues.

I do empathize with the frustration experienced by taxpayers who mount successful appeals only to have the results undone the following year. I suggest that in such instances, the usual burden of proof attached to the taxpayer be shifted to the county. If the county wishes to deviate from the value determined on appeal, it may do so only after overcoming the presumption of validity of the prior year's value.

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Approved THURSDAY - 3-17-92
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Dan Thiessen Chairperson at

11:00 a.m. ~~p.m.~~ on Monday, March 16, 1992 in room 519-S of the Capitol

All members were present except:
Senator Sheila Frahm (Excused)

Committee staff present:
Bill Edds, Revisor's Office
Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:
David Cunningham, P.V.D., Department of Revenue
Ann Smith, KS Association of Counties

Chairman Dan Thiessen called the meeting to order at 11:09 and told the members they have minutes in front of them dated March 3rd, 4th and 5th and would ask for a motion at the end of the meeting. He turned attention to **HB2811** and recognized Chris Courtwright, Research Department for a review of the bill.

Chris Courtwright said, when **HB2811** was introduced in the House, he said, he thought it was one of the recommendations from one of the Governor's summer Task Force's. He said, a number of these property tax related bills were referred to the sub-committee and **HB2811 and HB2812** were two of them. He said **HB2811** deals with the notion of whether the value should increase.

He said the last couple of year's the committee passed a bill that said, "counties can't increase value unless there has been a physical inspection, along with other language to that affect.

He said **HB2811** would for the next following year, prohibit counties from increasing the valuation of real property for which the value had been reduced through the appeals process unless "documented substantial and compelling reasons" were provided to substantiate the proposed increases.

He said, this is against real property only, and he said, the bill says for all years beginning with tax year 1992. He said, he thought this would not take effect until 1993.

After committee discussion The Chairman recognized David Cunningham, Director P.V.D., Department of Revenue.

David Cunningham said some counties have already mailed notices for 1992. He said there is a provision in the law where they are required to do a physical inspection prior to changing of value, and that would include upward or downward change in the value of property. He said, steps taken during the special session are in place.

He said, to be effective January 1, 1992, he wondered what the effects would be on the notices that have already been sent or will be sent or will have been sent by the time this becomes law?

During committee discussion a committee member asked Mr. Cunningham what he might suggest to make this bill better?

David Cunningham said what he believes is to come up with a mechanism to require the counties to do the job they are supposed to do, and not rely on the computers and markets that they are doing. He said, one of the things that the Governor's Task Force did in another bill, was to suggest that we need to have a greater ability to enforce the provisions of the law, and make the county appraiser's become accountable. He said, he would hold his comments on that until the committee get's to that bill.

Chairman Dan Thiessen concluded the hearing on **HB2811** and turned attention to **HB2812**.

Chris Courtwright reviewed **HB2812** with the committee and he said, the bill as amended would authorize the Director of Property Valuation to withhold reappraisal maintenance monies appropriated pursuant to K.S.A. 79-1478 from a county in noncompliance with property

tax statutes. A county aggrieved by any such an attempt to withhold funds would be allowed to appeal to the State Board of Tax Appeals (SBOTA) for a summary hearing in accordance with the KS Administrative Procedures Act (KAPA).

After committee discussion on **HB2812**, a committee member asked "how quickly one has to set a hearing and how long do they have to make a decision?

David Cunningham said in one case he knows about in Cherokee County where 1413a was filed and the Board commenced the summary proceeding within about 20 days, the preliminary was very brief and it still took a good six months. He said, this is one of the problems, the lenght of time it takes to work itself through.

He said, there is nothing intermediate, you either appraise or fire an appraiser, and the counties are opposed to this kind of intermediate level action.

He said, there was an attempt by the Governor's Task Force to get some intermediate level steps available to the Director to insure that people were going to follow the rules.

Chairman Dan Thiessen said maybe there should be penalities for the commissioners also, if this doesn't work. David Cunningham said that was also brought up in the House Committee, because the taxpayers are left holding the bill.

A committee member asked, if in Section 1, line 15 of **HB2812** should the word be "shall" or "may"?

Don Hayward said he thought the word should stay "shall" because it is a finding by the Director.

The Chairman Recognized Beverly Bradley, KS Association of Counties.

Ann Smith, KS Association of Counties presented Beverly Bradley's testimony. She said, they are opposed to **HB2812**, and she said, they feel it is not all the fault of the counties. They recommended a resonable definition of "compliance". She said, they would suggest that the "substantial compliance" that is currently in the statute be continued and that it be clearly defined. (**ATTACHMENT 1**)

The Chairman concluded the hearing on **HB2812** and turned attention to **HB2816** recognizing Tom Severn to brief the bill for the committee.

Dr. Tom Severn said **HB2816** recodifies the statutes that relates to the KS real estate sales ratio study act.

He said, there are several changes (1) Ratio study would be for calendar years, altho the 1st would be for a 16 month period from January 1, 1991 through the end of 1992. He said, the study would be conducted for counties, but no longer for school districts, and the Director would retain the authority to supplement ratio's with appraisals or sales from a previous year. He said, the current procedure for quarterly reports would be repealed, and they would make mid-year reports with the right of appeal to go to the Board of Tax Appeals if the County thought there were some problems with the way it is done.

He said, the reports would be published by April 1, and if the Director determined that it couldn't be published, then he would be required to make a preliminary report to the Governor, and certain legislative leaders, and the tax committee on or before March 15.

He explained the House Floor amendments on the 2nd page of his attachment (**ATTACHMENT 2**)

Having no conferees on **HB2816** The Chairman concluded the hearing.

Senator Audrey Langworthy moved to adopt the minutes of March 3rd, 4th, and 5th, 2nd by Senator Gerald Karr. The motion carried.

Chairman Dan Thiessen adjourned the meeting at 11:58 a.m.

Exhibit 3

Approved: 04/01/2013
(Date)

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:34 pm on Wednesday, March 6, 2013, in Room 582-N of the Capitol.

Members absent were: Representative Hedke.

Committee staff present:
Scott Wells, Office of the Revisor of Statutes
Adam Siebers, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Phyllis Fast, Committee Assistant

Conferees appearing before the Committee:
Luke Bell, Kansas Association of Realtors
Representative Steve Brunk, House District 85
Rich Eckert, Shawnee County Counselor
Greg McHenry, Riley County Appraiser
Randall Allen, Kansas Association of Counties

Others attending: See attached list.

Chairman Carlson opened a hearing on:

HB2134 – Property taxation; appeals of classification or valuation of property; protest payments.

Adam Siebers briefed the Committee on **HB2134** concerning each section of the bill. He stood for questions.

Luke Bell testified in support of **HB2134** by saying "it is a common-sense and reasonable proposal to streamline the property tax appeals process and increase the consistency and predictability of property taxes for property owners". He stood for questions. (Attachment 1)

Rep. Brunk, testified in support of **HB2134** by explaining his testimony mirrored the previous conferee's testimony. Written testimony to be provided at a later time.

No. 114,827
Respondents' Brief
EXHIBIT 3 A

Written only testimony in support of **HB2134** was presented by James Franko, Kansas Policy Institute. (Attachment 2)

Rich Eckert testified in opposition to **HB2134**, explaining the county's perspective of current and proposed legislation. He stood for questions. (Attachment 3)

Greg McHenry testified in opposition to **HB2134** because he believes language in the bill will create inequities in property valuations. He stood for questions. (Attachment 4)

Randall Allen testified in opposition to **HB2134** because he believes the bill will create additional costs to counties. He stood for questions. (Attachment 5)

Written only testimony in opposition to **HB2134** was presented by Paul Welcome, Johnson County Appraiser (Attachment 6); and James Skelton, Chairman, Sedgwick County Commission. (Attachment 7)

After all questions from the Committee were answered, Chairman Carlson closed the hearing on **HB2134**.

The next meeting of the Committee is scheduled for 3:30 pm Thursday, March 7, 2013 in 582-N of the Capitol to hear **HB2267**.

The meeting was adjourned at 4:48 pm.

HOUSE TAXATION COMMITTEE

Date: March 6, 2013

Name	Representing
Mandy Miller	SCofKS
Ron Gaches	CoBA
Gavin Kreidler	CoBA
Steven Cowen	Black Hills Energy
Kent Eckles	KS Chamber
Mick Urban	ONEOK
MARK Duncan	Self
Matt Sullard	Kearney
Eli Johns	Capitol Advantage
BRAD HARRELSON	KFB
SEAN MILLER	CAPITOL STRATEGIES
Brad Arnost	MG Co
Aron Popelka	KLA

Luke Bell
Vice President of Governmental Affairs
3644 SW Burlingame Rd.
Topeka, KS 66611
(785)633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: House Taxation Committee

Date: March 6, 2013

Subject: **HB 2134** – Supporting Changes to Streamline the Property Tax Appeals Process and Increase the Consistency and Predictability of Property Taxes for Property Owners

Chairman Carlson and members of the House Taxation Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in support of **HB 2134**, which is a common-sense and reasonable proposal to streamline the property tax appeals process and increase the consistency and predictability of property taxes for property owners. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 homeowners for over 90 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Over the last decade, the property tax burden on Kansas home owners and small businesses has increased exponentially as total property taxes collected have increased from roughly $1.97 billion in 1997 to over $3.9 billion in 2011, which is a 99.31% increase in just 14 years. This dramatic increase in the property tax burden is nearly triple the rate of inflation, ten times the rate of mill levy increases and nearly nine times greater than the state's population growth over the same time period.

If the Kansas Legislature does nothing to address this problem and property taxes continue to grow at the recent average annual growth rate of 5.1%, then the total property tax burden on Kansas farmers, home owners and small businesses would increase by another $4.3 billion to a total of nearly $8.3 billion by 2026. Can your constituents withstand this 110% increase in their property tax burden and can they afford to come up with another $4.3 billion annually to pay their property taxes in 2026?

Unfortunately, we believe that this dramatic growth in the property tax burden stifles the economic prosperity of many Kansas small businesses that have seen a consistent, dramatic increase in the amount of their business income that is devoted to paying their property tax assessments. Unlike our state's income taxes on small businesses (which are either average or slightly below average according to the Tax Foundation), the annual property tax bill of a small business does not vary according to whether the business earned a large profit or suffered a large loss over the course of the preceding year.

Instead, regardless of the underlying profitability of the business, nearly every small business owner will be required to pay the same onerous property tax each year, which only increases his or her business input costs and decreases the amount of capital that can be poured back into the business to expand by hiring new employees or investing in new business capacity. If Kansas is truly on the way to becoming a low tax burden state for businesses, then something must be done to address our exponentially increasing property taxes.

According to a detailed analysis by the Tax Foundation, Kansas currently has one of the most burdensome property tax systems for businesses with a ranking of 41st in 2012. Since the Kansas Legislature has started to discuss comprehensive income tax reform to improve the economic growth climate in Kansas for small businesses and individual taxpayers, REALTORS® strongly believe that the Kansas Legislature should also take action to improve the business climate through comprehensive property tax reform.

In addition, in the report entitled *Location Matters: A Comparative Analysis of State Tax Costs on Business* recently released by the Tax Foundation, Kansas ranks 47th overall in terms of the most favorable tax climate on mature business operations and 48th overall for newly-established business operations. Although the report concludes that the corporate income tax burden on these businesses are either average or even slightly below average, the report states that Kansas has one of the highest (if not the highest) property tax burdens on business operations across all 14 categories of businesses.

Furthermore, we believe this increasing property tax burden makes it more difficult for Kansas families to make ends meet and is severely burdensome for many senior citizens and low-income Kansans living on fixed incomes. Over the last few years, we have heard many anecdotal stories of Kansans literally being forced out of their homes due to their inability to keep up with the rapid escalations in their property tax burdens.

Unfortunately, this exponentially increasing property tax burden is compounded by several existing provisions in the property tax appeals process that create unfair treatment for property owners. These provisions make it significantly more difficult for property owners to successfully navigate the property tax appeals process and provide disincentives for county appraisers to deal fairly with property owners during the appeals process.

First, the new language in Section 3(a) on pages four and five of the legislation would prohibit a county appraiser from increasing the valuation of a property for three years after the property has been reduced by a final determination made in the property tax valuation appeals process, unless the county appraiser determines that there are "substantial and compelling reasons" for increasing the valuation of the property. Current law dictates that the county appraiser cannot increase the valuation of the property for the year following the successful appeal, but the existing language in this statute does not provide any definition of what constitutes a "substantial and compelling reason" behind the increased valuation.

In practice, current law basically allows the county appraiser to completely circumvent the intent behind the statute and increase the valuation of the property in the year immediately following a successful property tax appeal. Unfortunately, any property owner who has undergone the full property tax appeals process to the Kansas Court of Tax Appeals will tell you that this is a very difficult, expensive and time-consuming process.

When the property owner finally reaches the end of this arduous process (following thousands of dollars of consultants' and attorneys' fees and months or years of waiting) and is granted a decreased valuation of the property, good public policy would dictate that the successful conclusion of this process would provide the property owner with a certain amount of consistency and predictability in their property tax valuation for the next few years. Especially for commercial properties, many property owners rely on this consistent and predictable property valuation to obtain financing and manage their financial investment in the property.

However, in many cases we have received anecdotal reports from property owners that the county appraiser has simply increased the proposed valuation of the subject property back to the originally proposed amount that was the subject of the appeal in the next taxable year following the successful appeal. The practical effect of this practice is to completely negate the property owner's efforts in prosecuting the successful appeal and to again force them to consider spending considerable financial resources and time on another appeal.

Although we have no evidence as to how widespread this practice has become in recent years, we would content that it is completely unfair and an example of very poor public policy to require a property owner to undergo a subsequent valuation appeal on the subject property when they have just spent a considerable amount of financial resources and time in obtaining the relief on the first successful appeal. In our opinion, there must be a better system in place to provide property owners with consistency following an appeal.

As proposed in Section 3(a) on pages four and five of the legislation, the new language in **HB 2134** would simply guarantee that the property owner would be able to enjoy the relief provided by the first successful appeal for an uninterrupted period of three taxable years following the appeal. Unless the county appraiser was able to detail a "substantial and compelling reason" for increasing the valuation within this time period, the property owner would have consistency and predictability in the valuation of the subject property.

Second, the new language in Section 3(c) on page six of the legislation would define the term "substantial and compelling reasons" to mean a change in the character of the use of the property or a substantial addition or improvement to the property. As discussed above, current law does not define the term "substantial and compelling reasons" and therefore places no limits on the justification that can be used by a county appraiser to increase the valuation of the property following a successful appeal.

Under the current system, there is no objective definition of the term "substantial and compelling reasons" in any Kansas statutes, regulations or case law. Accordingly, the county appraiser has no criteria whatsoever to guide him or her on a claim that the valuation of the subject property should be increased due to a "substantial and compelling reason." In our opinion, the statute is so vague and indefinite that a reasonable property owner is given no guidance whatsoever on which circumstances might trigger a revaluation of the subject property under the existing statute.

As proposed in Section 3(c) on page six of the legislation, the new language in **HB 2134** will simply provide some objective criteria that the county appraiser will be required to follow when determining whether the valuation of the subject property can be increased following a successful appeal. The proposed definition of "substantial and compelling reasons" in **HB 2134** is completely reasonable and is consistent with the relevant case law concerning the grandfathering of properties with existing, non-conforming uses in zoning law.

Under the proposed language, unless the property owner changes the character of the use (which could have a significant impact on the value of the property) or expands or enlarges the physical footprint of the subject property (which again could and should have a significant impact on the value of the property), the property owner would be provided with consistency and predictability in the valuation of the subject property. Absent these changes to the subject property, we believe that it would be very difficult for the county appraiser to argue that any other reasons are sufficiently "substantial and compelling" to justify an upward departure from the valuation of the property established in a recent successful appeal by the Kansas Court of Tax Appeals.

Third, the new language in Section 1(c) on page two of the legislation would allow a property owner to utilize the small claims and expedited hearings division of the Kansas Court of Tax Appeals when the valuation of the subject property has been increased by the county appraiser in the next three taxable years following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process. As discussed previously in this testimony, the property tax appeals process is an extremely expensive and time-consuming process for property owners to navigate and we believe that the Kansas Legislature should explore all alternatives to improve upon this process for property owners.

When the county appraiser decides to increase the valuation of the subject property in a year immediately following the successful appeal of the property's valuation, this will force the property owner (who has just completed the very expensive and time-consuming process) to go through the exact same process again to contest the proposed valuation of the property and obtain relief from the Kansas Court of Tax Appeals. In these situations, we believe that it is entirely appropriate and good public policy to allow the property owner to go through a streamlined process to obtain more immediate relief on the property tax appeal.

This will ensure that property owners are not unnecessarily bogged down in continuous and nearly unending years of litigation in front of the Kansas Court of Tax Appeals over the proposed valuation on the exact same subject property. Under the proposed language in Section 1(c), property owners who have just completed a successful appeal of their property valuation could utilize the exact same process that is successfully utilized under current law by the owners of properties that are residential or have a valuation of less than $2,000,000.

Fourth, the new language in Section 2(a) on pages three and four of the legislation would allow the property owner to submit an independent appraisal of the subject property prepared by a licensed appraiser at the informal meeting for property tax appeals. If the county appraiser declines to adopt the valuation established in the independent appraisal, and the taxpayer decides to continue the valuation appeals process, then the county appraiser would be required to show why the independent appraisal is not valid.

However, if the taxpayer's property is subsequently reduced by a final determination of the valuation appeals process, then the county would be required to pay all reasonable attorney fees and costs of the prevailing taxpayer. The bill would also require the county appraiser, at the informal meeting for property tax appeals, to provide evidence to substantiate the valuation of the property, including allowing the taxpayer the opportunity to review the data sheet of comparable sales used in the determination of the valuation at least 48 hours before any hearing on the valuation.

Under current law, there is absolutely no requirement that a county appraiser or any individual employed by a county appraiser maintain a valid certificate or license as a real estate appraiser from the state of Kansas. Although the county appraiser is required to follow the standards articulated in the Uniform Standards of Professional Appraisal Practice (USPAP) in valuing properties like certified and licensed real estate appraisers, they are not required to actually undergo the same stringent certification and licensing requirements as private citizens employed as certified or licensed real estate appraisers.

In our opinion, there is absolutely no reason why an independent appraisal of the subject property prepared by a certified or licensed appraiser should not be required to be considered by the county appraiser in the property tax appeals process. As proposed in Section 2(a) on pages three and four of the legislation, the county appraiser would simply be required to consider the independent appraisal submitted by the property owner in the valuation appeals process and would bear the burden of proof in refuting the independent appraisal if he or she chose not to accept the independent appraisal as the valuation of the property.

We strongly believe that individuals certified or licensed as real estate appraisers are similarly (or even more) qualified to establish the valuation of properties as county appraisers. If the property owner obtains an independent and unbiased valuation of the property from a certified or licensed real estate appraiser, then there is simply no good reason why the county appraiser should not be required to give full consideration to this independent appraisal in the property tax appeals process.

Finally, the new language in Section 4(a) on page seven of the legislation would require the county appraiser, at the informal meeting for property tax appeals, to provide evidence to substantiate the valuation of the property, including allowing the taxpayer the opportunity to review the data sheet of comparable sales used in the determination of the valuation at least 48 hours before any hearing on the valuation

Unfortunately, the county appraiser is the party that has most of the necessary information in the property tax appeals process. If the property owner is going to receive a fair opportunity to have an equal and informed discussion with the county appraiser in the informal meeting required by the statute, the county appraiser should be required to provide the evidence used to substantiate the proposed valuation prior to the meeting. This will ensure that the property owner has a reasonable amount of time to review this information and prepare their arguments and questions for the informal meeting with the county appraiser.

For all the foregoing reasons, we would urge the members of the House Taxation Committee to strongly support the provisions of **HB 2134**, which is a common-sense and reasonable proposal to streamline the property tax appeals process and increase the consistency and predictability of property taxes for property owners. Thank you again for the opportunity to testify and I would be willing to stand for questions at the appropriate time.

Testimony to House Taxation Committee

HB 2134 – Property Tax Appeals

March 6, 2013

James Franko, Vice President / Policy Director

Chairman Carlson and Members of the Committee:

We appreciate this opportunity to present testimony in support of HB 2134 to give property owners a fair process by which to appeal property tax appraisals. Kansas Policy Institute has been in engaged in property tax issues for several years and the unfairness of the appeals process is one of the most frequent complaints.

Perhaps nothing demonstrates this more clearly than the large volume of tax appeals than have decided in the favor of taxpayers or settlements that have been reached after an appeal has been referred to the Court of Tax Appeals. As shown on the attachment to this testimony, 47 percent of the nearly 12,000 residential and commercial cases heard by COTA between 2006 and 2008 were decided in favor of the taxpayer. That's an astonishing rate of rejection by a court.

Another 6,300 cases were settled before going to court; counting all cases where taxpayers were granted full or partial relief from excessive valuations, 65 percent of the appeals were decided in favor of taxpayers.

The Open Record request that produced this information three years ago has not been updated, but we continue to hear the same complaints from taxpayers. Under current law, the deck is stacked in favor of government, which only encourages excessive appraisals that must be fought in court as high cost to the taxpayer. HB 2134 introduces more fairness into the process in a number of ways.

- ✓ The county would be required to provide their comparable values ('comps') to the taxpayer at least 48 hours in advance of an appeals meeting. Currently, taxpayers frequently receive the 'comps' at the meeting and have no opportunity to research and refute.

- ✓ If the county does not accept an appraisal from a Kansas-certified appraiser, the burden of proof in an appeals process falls on the county. And if the taxpayer prevails in such circumstance, the county shall be required to pay reasonable attorney fees and costs to the prevailing taxpayer. Currently, the county has nothing to lose by rejecting a valid appraisal and forcing taxpayers to spend even more money going to court. The 'game' that's played (as relayed by taxpayers) is that the county often settles shortly before an appeal is to be heard by COTA (6,300 hundred times over a three-year period).

- ✓ Even when taxpayers prevail on appeal or settlement, counties often come back with a much higher appraised value the following year, forcing taxpayers to start the entire process over and spend more money. HB 2134 would require any valuation that is reduced in a final determination made pursuant to the valuation appeals process shall remain in effect for three years.

HB 2134 does not restrict government's ability to value property or raise taxes in any way. It merely corrects a number of inequities in the appeals process and we encourage the Committee to report it out favorably.

Court of Tax Appeals - Res. and Comm. Combined

	2006 to 2008 Cases			Cases Heard		Some / All Taxpayer Favor	
	Granted	Denied	Stipulated	Granted	Denied	Granted & Stipulated	Denied
Allen	0	2	3	0%	100%	60%	40%
Anderson	3	2	1	60%	40%	67%	33%
Atchison	5	5	16	50%	50%	81%	19%
Barber	4	4	0	50%	50%	50%	50%
Barton	30	52	32	37%	63%	54%	46%
Bourbon	6	1	2	86%	14%	89%	11%
Brown	11	1	3	92%	8%	93%	7%
Butler	337	378	225	47%	53%	60%	40%
Chase	0	4	2	0%	100%	33%	67%
Chautauqua	2	0	1	100%	0%	100%	0%
Cherokee	1	8	18	11%	89%	70%	30%
Cheyenne	0	0	0				
Clark	0	6	0	0%	100%	0%	100%
Clay	0	2	3	0%	100%	60%	40%
Cloud	0	0	0				
Coffey	0	1	2	0%	100%	67%	33%
Comanche	11	7	19	61%	39%	81%	19%
Cowley	10	31	22	24%	76%	51%	49%
Crawford	11	35	25	24%	76%	51%	49%
Decatur	0	0	0				
Dickinson	39	33	20	54%	46%	64%	36%
Doniphan	1	1	3	50%	50%	80%	20%
Douglas	201	309	289	39%	61%	61%	39%
Edwards	0	0	0				
Elk	0	3	1	0%	100%	25%	75%
Ellis	8	8	7	50%	50%	65%	35%
Ellsworth	3	6	3	33%	67%	50%	50%
Finney	43	43	537	50%	50%	93%	7%
Ford	2	6	15	25%	75%	74%	26%
Franklin	195	25	14	89%	11%	89%	11%
Geary	10	14	10	42%	58%	59%	41%
Gove	0	0	1			100%	0%
Graham	4	4	4	50%	50%	67%	33%
Grant	18	0	0	100%	0%	100%	0%
Gray	1	6	5	14%	86%	50%	50%
Greeley	0	0	0				
Greenwood	0	2	1	0%	100%	33%	67%
Hamilton	0	0	0				
Harper	1	6	1	14%	86%	25%	75%
Harvey	0	3	1	0%	100%	25%	75%
Haskell	0	0	2			100%	0%
Hodgeman	0	1	0	0%	100%	0%	100%
Jackson	16	9	1	64%	36%	65%	35%
Jefferson	11	22	10	33%	67%	49%	51%
Jewell	0	1	0	0%	100%	0%	100%
Johnson	1266	1142	2096	53%	47%	75%	25%
Kearny	0	1	0	0%	100%	0%	100%
Kingman	5	9	5	36%	64%	53%	47%
Kiowa	0	0	1			100%	0%
Labette	16	15	6	52%	48%	59%	41%
Lane	0	0	0				
Leavenworth	61	69	83	47%	53%	68%	32%
Lincoln	0	9	0	0%	100%	0%	100%
Linn	1	6	1	14%	86%	25%	75%

Source: Kansas Court of Tax Appeals; combined results of Small Claims and Regular Division

'Granted' includes relief in whole or part; 'Stipulated' includes cases resolved by the parties without a decision on the merits

Court of Tax Appeals - Res. and Comm. Combined

	2006 to 2008 Cases			Cases Heard		Some / All Taxpayer Favor	
	Granted	Denied	Stipulated	Granted	Denied	Granted & Stipulated	Denied
Logan	0	0	0				
Lyon	123	20	10	86%	14%	87%	13%
Marion	8	15	11	35%	65%	56%	44%
Marshall	0	0	0				
McPherson	2	10	10	17%	83%	55%	45%
Meade	0	0	0				
Miami	65	61	61	52%	48%	67%	33%
Mitchell	1	1	0	50%	50%	50%	50%
Montgomery	9	13	23	41%	59%	71%	29%
Morris	73	5	0	94%	6%	94%	6%
Morton	1	2	2	33%	67%	60%	40%
Nemaha	1	2	1	33%	67%	50%	50%
Neosho	12	15	17	44%	56%	66%	34%
Ness	1	3	25	25%	75%	90%	10%
Norton	0	0	0				
Osage	140	27	12	84%	16%	85%	15%
Osborne	1	0	0	100%	0%	100%	0%
Ottawa	0	2	0	0%	100%	0%	100%
Pawnee	6	18	3	25%	75%	33%	67%
Phillips	0	1	1	0%	100%	50%	50%
Pottawatomie	2	7	9	22%	78%	61%	39%
Pratt	3	4	11	43%	57%	78%	22%
Rawlins	0	0	0				
Reno	61	71	48	46%	54%	61%	39%
Republic	0	0	0				
Rice	0	0	9			100%	0%
Riley	5	140	135	3%	97%	50%	50%
Rooks	1	5	1	17%	83%	29%	71%
Rush	0	0	0				
Russell	19	3	7	86%	14%	90%	10%
Saline	111	238	101	32%	68%	47%	53%
Scott	0	0	0				
Sedgwick	1003	1657	1344	38%	62%	59%	41%
Seward	1	38	7	3%	97%	17%	83%
Shawnee	355	414	352	46%	54%	63%	37%
Sheridan	3	5	0	38%	63%	38%	63%
Sherman	0	1	0	0%	100%	0%	100%
Smith	0	2	1	0%	100%	33%	67%
Stafford	4	6	2	40%	60%	50%	50%
Stanton	0	0	0				
Stevens	39	1	0	98%	3%	98%	3%
Sumner	41	90	29	31%	69%	44%	56%
Thomas	0	0	0				
Trego	0	0	0				
Wabaunsee	0	5	8	0%	100%	62%	38%
Wallace	0	0	0				
Washington	1	2	0	33%	67%	33%	67%
Wichita	0	0	0				
Wilson	1	2	1	33%	67%	50%	50%
Woodson	4	0	0	100%	0%	100%	0%
Wyandotte	1105	1075	590	51%	49%	61%	39%
	5535	**6253**	**6322**	**47%**	**53%**	**65%**	**35%**

Source: Kansas Court of Tax Appeals; combined results of Small Claims and Regular Division
'Granted' includes relief in whole or part; 'Stipulated' includes cases resolved by the parties without a decision on the merits

Kansas House of Representatives' House Taxation Committee
Testimony of Richard Eckert, Shawnee County Counselor
Shawnee County Counselor in Opposition to House Bill No. 2134

Discussion of Bill sections appear in order of importance to Shawnee County

Sec. 2 of HB 2134 amending K.S.A. 79-1448

As written, this amendment to K.S.A. 79-1448 would effectively require Shawnee County to accept the value of every appraisal submitted by a taxpayer at the informal level. The reasoning for this is that Shawnee County cannot begin to predict the cost of litigation and attorneys fees for budgeting purposes for all cases taken to the small claims or regular division of COTA.

It is common for COTA to make a final determination that does not mirror exactly a county's or taxpayer's appraisal, but instead submit its own value based upon all of the evidence submitted at an evidentiary hearing before them. As written, the amendment would result in the county being required to pay costs and attorney fees in every one of those situations where the Court chooses, for instance, a value in between the two appraisals. Additionally, it is common for the parties to negotiate during the course of the case for settlement purposes. It is not irregular for the parties to stipulate to a value acceptable to both given the information they obtain during the discovery process. A stipulation approved by the court is a final determination. Thus, as the amendment is written, the County would be responsible for paying costs and attorney's fees if it stipulates to even a remotely lesser value than it originated with.

Shawnee County simply cannot accommodate for this risk in our budget. Thus, we would not contest any taxpayer who presented an appraisal at the informal level, which would in effect cause the county to be in violation of the Division of Property Valuation's substantial compliance requirements regarding uniformity. The Kansas Constitution requires that the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. Kan. Const. Art. 11 § 1(a). This proposed amendment would destroy that uniformity if one property owner submits an appraisal at the informal level, and another doesn't.

Sec. 3 of HB 2134 amending K.S.A. 79-1460

This suggested amendment disregards the long-standing requirement that fair market value be used to determine the value of property for ad valorem purposes pursuant to K.S.A. 79-503a. Further, there are instances of when a property's value increase is warranted despite the square footage not being expanded. Just as an example, in the event a residential property owner makes repairs to a home that was dilapidated at the time of purchase, those repairs would increase the fair market value of the property. As proposed, this amendment prevents the county from increasing that value.

Sec. 1 of HB 2134 amending K.S.A. 74-2433f

As written, the proposed amendment would give the small claims division of the state court of tax appeals jurisdiction over multi-million dollar commercial and industrial value appeals. This cannot possibly be the intent of the legislature in defining a "small claim."

For the reasons identified above, the Board of County Commissioners of Shawnee County strongly opposes H.B. 2134.

RILEY COUNTY

APPRAISER'S OFFICE

110 Courthouse Plaza
Manhattan, Kansas 66502
Phone: 785-537-6310
Fax: 785-537-6312
E-mail: gmchenry@rileycountyks.gov

March 4, 2013

Chairman Richard Carlson
House Taxation Committee
State Capitol, Room 582-N
Topeka, KS 66612

Re: H.B.2134

Dear Chairman Carlson and Members of the Committee:

I am the Riley County Appraiser. On behalf of my office and the Kansas County Appraisers Association, I oppose H.B. 2134.

There are several problems with the bill's language that I believe will ultimately create inequities in property valuations. The first is the bill's expansion of Small Claims to include properties with values greater than $2,000,000 if/when the valuation has been increased following an appeal which resulted in a valuation reduction. The Small Claims Division works very well for homes, smaller value commercial properties, etc. It was not designed to provide adequate time or expertise for more complex, larger value properties. The 20 minutes allotted for Small Claims hearings would not do either party justice in their efforts to present their case. In addition, Small Claims officers are not adequately qualified for valuation decisions of higher value, more complex properties. Decisions made by less qualified hearing officers in hearings with severe time restraints will inevitably lead to inequitable decisions for property owners and counties.

The second problem area in HB 2134 is the bill's requirement that county appraisers adopt fee appraisals as a property's valuation when fee appraisals are provided by the property owner. County appraisers welcome any & all valuation evidence presented by property owners, including fee appraisals. However, not all fee appraisals are valid or appropriate for our purposes. As examples:

- Fee appraisals can be made for many different scopes & purposes. Appraisals can be made for re-financing, sales listings, estate settlements, property exchanges, partnership buy-outs, mergers, etc. The values described in those types of appraisals can vary greatly and could result in inaccurate valuations, detrimental to either or both parties.
- Date of appraisal is extremely important. County values have an effective date of appraisal of January 1st each year. This bill would allow appraisals that are many years old, which could result in inaccurate, inequitable values that are too low or too high.
- Many commercial appraisals are made for leased fee purposes instead of fee simple. This means the appraisal is likely based on the business interest instead of the real estate. County appraisers are required to appraise properties on a fee simple basis. Using appraisals that are less than fee simple could result in highly inaccurate valuations.

A third problem with the bill is its requirement that counties be required to pay attorney fees and costs to property owners when valuations are reduced through the appeals process. Counties are already required to pay interest on refunds and currently budget for that. Budgeting for other parties attorney fees, etc. would be extremely difficult.

The fourth problem with this bill is the requirement to change the "roll-over" provision from 1 year to 3 years for properties whose values have been reduced through an appeal. This would result in inequities among similar properties whose values are not kept the same for 3 years. The roll-over values can be far below or far above actual market value.

The fifth problem with HB 2134 is the definition of "substantial and compelling reasons" described in the bill. The language does not allow for valuation adjustments for interior finishing or remodeling that occur within properties. This could result in large inequities between similar properties.

Another problem area with HB 2134 is the requirement for county appraisers to initiate production of evidence at least 48 hours before a scheduled valuation hearing. County appraisers encourage property owners to review their property records and/or comp sheets prior to their appeals. Counties already make property record cards, comp sheets, etc. available on the date of mailing for valuation notices. Many counties make these documents available on-line during the informal appeals process at no cost to property owners.

HB 2134 is unnecessary and it presents many problems for counties and property owners alike. Please do not pass to the House floor H.B. 2134.

Sincerely,

Greg McHenry
Riley County Appraiser

cc: Board of Riley County Commissioners
Senator Tom Hawk
Representative Sydney Carlin
Representative Vern Swanson
Representative Tom Phillips
Representative Ron Highland

KANSAS ASSOCIATION OF COUNTIES

TESTIMONY OF THE KANSAS ASSOCIATION OF COUNTIES
ON HB 2134
MARCH 6, 2013

Chairman Carlson and Members of the Committee:

My name is Randall Allen and I am the Executive Director of the Kansas Association of Counties. HB 2134 makes several changes to the property tax appeals process that concern KAC.

First, the bill allows an appeal to the Small Claims and Expedited Hearings Division of the Court of Tax Appeals for *any* property that saw increased valuation in the three years following an appeal that reduced the property's valuation. This means more complex and expensive properties will go before the Small Claims Division even though this division was intended to address only smaller, less-expensive properties. In particular, residential properties were the intended purview of the Small Claims Division. KAC is concerned that the Small Claims Division is not staffed with enough hearing officers to take on more areas of property valuation, and the staff may not be knowledgeable on complex properties. The Small Claims Division is expected to provide an expedited process to taxpayers, yet HB 2134 will deliver to that division complex cases that will slow the process.

Our second concern is that the bill says if the county appraiser declines to adopt the taxpayer's own valuation appraisal, the county appraiser must prove by preponderance of evidence that the appraisal is invalid. If the taxpayer proceeds with his valuation appeal and the property value is reduced, the county must pay attorney fees and costs. The bill does not require that the valuation be reduced to the amount given in the taxpayer's appraisal in order to receive attorney fees and costs. Counties already pay interest on property tax refunds to the taxpayer, and interest can be reasonably calculated and budgeted. Attorney fees and costs cannot be easily calculated, and are a further drain on the county coffers.

HB 2134 does not specify any date requirement for the taxpayer's appraisal; can it be five-years-old, ten-years-old? The bill does not specify that the appraisal be conducted for the purpose of appealing property taxes; was the appraisal conducted for insurance purposes, for the sale of the property, for a merger? In other words, the valuation appraisal presented by the taxpayer pursuant to this legislation need not be current or an appraisal conducted specifically for the valuation process.

Our third concern is that HB 2134 prohibits an increased valuation for the three years following a reduction awarded in the appeals process, except for substantial and compelling reasons. The reasons allowing an increase are newly defined to mean an expansion or enlargement of the

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property, but not maintenance, renovation, or repairs of the existing structures that do not expand the square footage. This language prevents an increase in valuation to a property that has been fixed following damage or deferred maintenance. If a property is damaged or neglected, its value decreases as does its taxes. Once that property is fixed and restored, its value and taxes should increase. This provision ignores the concept of fair market value of property.

Lastly, the bill requires that the county appraiser initiate production of evidence to substantiate the property's valuation, which includes providing to the taxpayer the data sheet of comparable sales. This information is available to the taxpayer now. In fact, counties that use the sales-comparison model for valuation include the comparable sales on the valuation notice sent to the taxpayer!

KAC opposes HB 2134 and we encourage the committee members to keep it in committee.

Randall Allen, Executive Director

To: House Committee on Taxation

From: Paul A. Welcome, County Appraiser, FRICS, CAE, RMA

Date: March 5, 2013

Subj: House Bill 2134

Each section of the proposed bill is quoted below followed by numbered comments

> thereto, other than those relating to land devoted to agricultural use, wherein the value of the property is less than $2,000,000 as reflected on the valuation notice; *or the valuation of the property has been increased by the county appraiser in the next three taxable years following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process.*

1. The purpose of the small claims hearing process is to expedite appeals of less expensive properties, particularly residential, through the hearing process; hence the name "small claims." The process is not designed for complex commercial properties. This section allows a property worth $20 to $300 million to use the small claims appeal process.

2. The small claims hearing officers, unlike the judges at the regular division, are not required to have any appraisal qualifications necessary for more complex properties. Also, with only one hearing officer, the collaborative knowledge of several officers is not available as it is at the regular division.

3. Given the strict time limits to complete the small claims hearing process, it would not be possible to have a hearing of sufficient length to deal with more complex valuation issues that frequently arise with more complex properties or it will impede the expedited process for homeowners as more hearing time will necessarily be devoted to more complex properties.

4. The language creates a means to circumvent the filing fee to the regular division.

5. The language is unclear. It seems to allow an appeal up to four years after a final decision in the prior tax year.

> At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. *At such meeting, the taxpayer may present the county appraiser with an appraisal of valuation of the taxpayer's property prepared by an individual licensed as an appraiser pursuant to K.S.A. 58-4101 et seq., and amendments thereto. If the county appraiser declines to adopt the valuation of the taxpayer's property as established in the appraisal presented by the*

taxpayer and the taxpayer elects to appeal the decision pursuant to the valuation appeals process, it shall be the duty of the county appraiser to demonstrate, by a preponderance of the evidence, the invalidity of the appraisal submitted by the taxpayer. If the county appraiser declines to adopt the valuation of the taxpayer's property as established in the appraisal presented by the taxpayer and the valuation of the taxpayer's property is reduced pursuant to a final determination made pursuant to the valuation appeals process, the county shall be required to pay reasonable attorney fees and costs to the prevailing taxpayer.

1. The valuation date of the appraisal submitted by the Taxpayer is not specified. The language allows the Taxpayer to submit an appraisal that could be years old.
2. The language does not specify that the appraisal must be done specifically for ad valorem tax purposes. Appraisals can be done for financing; for exchange of properties; for partnership buyouts; for mergers, etc. all of which may have different definitions of value than as is specified in K.S.A. 79-503a or may be valuing interests less than fee simple.
3. If the value is reduced, but not to the value of the Taxpayer's appraisal value, the Court or hearing office may have determined:
a. that both parties have not been persuasive and it has determined a value based on evidence taken from both parties or
b. that there are errors in the Taxpayer's appraisal that required correction or
c. that the Taxpayer's appraisal is not persuasive at all; but, that the County's appraisal is persuasive other than a property characteristic needs to corrected.
4. The County is already required, pursuant to K.S.A. 79-2005, to pay interest on any refund from the general fund. The possible costs of interest can be reasonably calculated and budgeted based on historical analysis. The payment of attorney fees and costs cannot be reasonably accounted for in the budget process.

(2) the valuation of the property has been increased by the county appraiser in a taxable year *immediately following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process;*

The same concerns as identified at the beginning of the testimony apply to this section regarding the small claims hearing process.

(c) For the purposes of this section: (1) The term "substantial and compelling reasons" means a change in the character of the use of the property or a substantial addition or improvement to the property;(2) the term "substantial addition or improvement to the property" means any expansion or enlargement of the physical occupancy of the property through the construction of any new structures or improvements on the property or any renovations that expand or enlarge the square footage of any existing structures or improvements on the property. The term "substantial addition or improvement to the property" shall not include: (A) Any maintenance, renovation or repair of any existing structures, equipment or improvements on the property that does not expand or enlarge the square footage of any existing structures or improvements on the property; or (B)

reconstruction or replacement of any existing equipment or components of any existing structures or improvement on the property.

1. Valuation are frequently reduced because a property suffers or is suffering from storm damage or deferred maintenance. Clearly, such conditions adversely affect value. When the damage or deferred maintenance is fixed, the property no longer suffers from the adverse condition. It creates inequity to those owners who did not suffer the same issue to allow an owner to benefit when the adverse condition no longer exists.
2. For commercial properties, the County recognizes diminished value to space that has no interior finish. It is common that interior finish is not completed until a tenant leases. Under this language, the County would not be able to recognize the added value of interior finish because the square footage has not increased. This creates inequity to other owners.
3. K.S.A. 79-503a requires that all properties are to be valued at fair market value. The proposed language does not recognize the fair market value concept and creates inequity.

At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including affording the taxpayer the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation at least 48 hours before any hearing on such valuation.

1. When a residential property is valued by the sales comparison approach, the comparable sales are identified on the valuation notice sent pursuant to K.S.A. 79-1460.
2. The property owner can review the comparable sales as well as any other property thought to be comparable online or come in to customer service counter.
3. PVD, with a programming enhancement to the computer assisted mass appraisal system, could make the property record card for all properties available online.
4. It is believed that all counties make this information accessible and available ongoing.

SEDGWICK COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS

JAMES B. SKELTON
CHAIRMAN
FIFTH DISTRICT

DAVID M. UNRUH
CHAIR PRO TEM
FIRST DISTRICT

TIM R. NORTON
COMMISSIONER
SECOND DISTRICT

KARL PETERJOHN
COMMISSIONER
THIRD DISTRICT

RICHARD RANZAU
COMMISSIONER
FOURTH DISTRICT

COUNTY COURTHOUSE • 525 NORTH MAIN • SUITE 320 • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 660-9300 • FAX (316) 383-8275

To: Committee on Taxation

From: James B. Skelton, Chairman

Date: March 4, 2013

Re: Opposition to House Bill 2134

There are several issues concerning this pending legislation that need to be considered. Comments regarding proposed legislative changes follow selected portions of this bill.

Thereto, other than those relating to land devoted to agricultural use, wherein the value of the property is less than $2,000,000 as reflected on the valuation notice; *or the valuation of the property has been increased by the county appraiser in the next three taxable years following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process.*

- **The small claims and expedited hearings division is not designed to handle complex properties.**
    - **Hearings are designed to be informal.**
    - **Hearings generally are 30 minutes in length.**
    - **No records of hearings are kept.**
    - **Hearing officers have little experience with complex properties.**
    - **Allowing appeals up to 4 years after a final decision in the prior tax year creates unstable tax rolls.**

At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. *At such meeting, the taxpayer may present the county appraiser with an appraisal of valuation of the taxpayer's property prepared by an individual licensed as an appraiser pursuant to*

K.S.A. 58-4101 et seq., and amendments thereto. If the county appraiser declines to adopt the valuation of the taxpayer's property as established in the appraisal presented by the taxpayer and the taxpayer elects to appeal the decision pursuant to the valuation appeals process, it shall be the duty of the county appraiser to demonstrate, by a preponderance of the evidence, the invalidity of the appraisal submitted by the taxpayer. If the county appraiser declines to adopt the valuation of the taxpayer's property as established in the appraisal presented by the taxpayer and the valuation of the taxpayer's property is reduced pursuant to a final determination made pursuant to the valuation appeals process, the county shall be required to pay reasonable attorney fees and costs to the prevailing taxpayer.

- **Proposed legislation fails to limit and identify the type of appraisal and the appraisal date as it relates to the year a property's valuation is under appeal.**
    - **Out-of-date appraisals could be submitted.**
    - **Opens the door for all types of appraisals to be used, such as for financing, merger, or exchange of properties.**
    - **Appraised value may not be based on fair market value as required by Kansas law.**

- **Proposed legislation requires county to pay attorney fees and costs should the values be reduced.**
    - **Difficult to estimate potential costs while preparing budgets.**
    - **Reduces the incentive for counties to negotiate value reductions during the hearing process.**

(c) For the purposes of this section: (1) The term "substantial and compelling reasons" means a change in the character of the use of the property or a substantial addition or improvement to the property;(2) the term "substantial addition or improvement to the property" means any expansion or enlargement of the physical occupancy of the property through the construction of any new structures or improvements on the property or any renovations that expand or enlarge the square footage of any existing structures or improvements on the property. The term "substantial addition or improvement to the property" shall not include: (A) Any maintenance, renovation or repair of any existing structures, equipment or improvements on the property that does not expand or enlarge the square footage of any existing structures or improvements on the property; or (B) reconstruction or replacement of any existing equipment or components of any existing structures or improvement on the property.

- **Proposed legislation could violate the uniform and equal provision in the Kansas Constitution and the legislative requirement that property be valued at fair market value.**

- **Significant value changes commonly occur without adding square footage when a property is remodeled.**

At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including affording the taxpayer the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation at least 48 hours before any hearing on such valuation.

- **This service is already being provided.**

Approved: March 05, 2014

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairperson Richard Carlson at 3:31 p.m. on Wednesday, February 19, 2014, 582-N of the Capitol.

All members were present

Committee staff present:
Phyllis Fast, Committee Assistant
Chuck Reimer, Office of Revisor
Chris Courtwright, Legislative Research
Scott Wells, Office of Revisor
Edward Penner, Legislative Research
Conferees appearing before the Committee:
Kent Eckles, Kansas Chamber of Commerce
Linda Terrill, Property Tax Law Group, LLC
Dave Trabert, Kansas Policy Institute
Brad Renollet, Renollet Associates-National Property Tax Consulting Group
Dr. Lori McMillan, Washburn School of Law
Scott Slabotsky, CBIZ MHM, LLC
Others in attendance:
See Attached List

Chairman Carlson opened a hearing on:

HB2614 Property valuation and appeals; providing for a biennial valuation of real property; renaming the state court of tax appeals; salary and removal of members; powers and duties of the board.

Scott Wells briefed the Committee on **HB2614** by offering a detailed summary of the bill. He stood for questions. (Attachment 1)

Kent Eckles presented testimony in support of **HB2614** by offering a detailed outline of deficiencies in the current court of tax appeals. He stood for questions. (Attachment 2)

Linda Terrill presented testimony in support of **HB2614** by providing a recent history of problems she had faced with the court of tax appeals. She stood for questions. (Attachment 3)

Dave Trabert presented testimony in support of **HB2614** by summarizing dilemmas taxpayers face with the current court of appeals. He stood for questions. (Attachment 4)

Brad Renollet presented testimony in support of **HB2614** by referencing his knowledge of other states practices. He stood for questions. (Attachment 5)

Lori McMillan presented testimony in support of **HB2614**. She stood for questions. (Attachment 6)

Scott Slabotsky presented testimony in support of **HB2614.** He stood for questions. (Attachment 7)

After all questions from the Committee were answered, Chairman Carlson announced the hearing on **HB2614** would be continued at the next committee meeting.

The next meeting of the Committee is scheduled for 3:30 pm Thursday, February 20, 2014 in 582-N of the Capitol.

The meeting was adjourned at 5:16 pm.

HOUSE TAXATION COMMITTEE

Date: February 19, 2014 HB2614-Proponents

Name	Representing
Michael Gillaspie	ONEOK
Bill Sneed	Policy
Lynn Ecklus	KS Chamber
Mike Murray	Ark City Council
Gene Bryan	Unified Gov't Wy Co
Lori McMillan	

Office of Revisor of Statutes

300 S.W. 10th Avenue
Suite 024-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: House Committee on Taxation

From: Scott Wells, Senior Assistant Revisor

Date: February 17, 2014

Subject: 2014 House Bill 2614

House Bill 2614 is a comprehensive change in the valuation of property for tax purposes in the state of Kansas and how appeals of property valuation and taxes are administered at the state court of tax appeals. Because of the length of the bill, this memo is intended to provide a very brief section by section bullet point explanation of the contents.

Throughout the entire bill:

- The court of tax appeals is renamed to the board of tax appeals; judges are renamed members.

Section 1 (Pg 1):

- Provides for a biennial property valuation mechanism where property valuation from first year of biennium is retained for the second year.

Section 2 (Pg 2):

- Filing fees refunded when board has not rendered a decision within 120 days and parties have not waived such 120 day period nor can board show good cause for the delay.
- Appellant given choice of appealing to district court or court of appeals for all final orders issued on or after December 1, 2013 and denial of motion to reconsider issued on or after January 1, 2014.
- Review by district court to be in county where subject property is located.
- Requirement for giving a bond in the amount of 125% of taxes assessed or lesser as approved by reviewing court has been eliminated.

Section 3 (Pg 3):

- Member of board may continue to serve for a maximum of up to 90 days after term has expired.
- Members of the board may be removed for cause by filing a petition in Shawnee county district court. Cause includes failing to issue orders within the 120 day time limit.

- Appeals decided by the board shall be made public and published on the board's website within 30 days of having been rendered.
- Board required to issue a monthly report to the Kansas legislature of all appeals decided that month and how many remain undecided and beyond the 120 day time limit. Such report shall be made available to the public.

Section 4 (Pg 6):

- Maximum limit of property value to be allowed in small claims division is raised from $2,000,000 to $5,000,000.
- Any county that appeals to the regular board from the small claims division bears the burden of proof.
- A notice of appeals filed by a taxpayer to the small claims division may be signed by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer.
- Unsigned or incorrectly signed notice of appeal form will not be grounds for dismissal.
- With regard to leased commercial and industrial property, burden of proof is on the taxpayer unless the taxpayer provides the county or district appraiser a complete income and expense statement for the three previous years. The income and expense statement shall be in a form acceptable to the court and shall be provided to the county after filing the notice of appeal.

Section 5 (Pg 8):

- Salary of chief hearing office is to be an amount equal to an entry level administrative hearing officer.
- Salaries of members to be an amount equal to an administrative law judge.

Section 6 (Pg 8):

- Board is prohibited from determining who may sign appeals forms, who may represent taxpayers in matters before the court, what constitutes the unauthorized practice of law, and whether or not a contingent fee agreement is a violation of public policy.
- Board is also prohibited from interfering with efforts between counties and taxpayers to reach a settlement or agreement.

Section 7 (Pg 9):

- Any appraisal made by a county or district appraiser must be released to the taxpayer through the discovery process.
- If the taxpayer presents a property-specific appraisal conducted by a certified general appraiser, the property-specific appraisal must be accepted in lieu of the county's mass appraisal.

Section 8 (Pg 10):

- Filing fees shall not be charged to a taxpayer who has filed a previous appeal which has not been decided in the 120 day time limit, single-family residential appeals or the appeal of a not-for-profit organization if the organization's property valuation does not exceed $100,000.

Section 9 (Pg 11):

- Requirement that a request for reconsideration be filed before seeking judicial review has been eliminated.

Section 10 (Pg 12):

- Removed requirement that appraisals be performed in accordance with standards in effect on march 1, 1992.

Section 11 (Pg 12):

- Removed language providing that appraiser's valuation of leased commercial and industrial property presumed correct unless taxpayer provides complete income and expense statements for the last 3 years.
- Increased the maximum property value for appeals to small claims division of the board from $2,000,000 to $5,000,000.

Section 12 (Pg 13):

- A notice of appeals filed by a taxpayer to the small claims division may be signed by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer.
- Unsigned or incorrectly signed notice of appeal form will not be grounds for dismissal.
- With regard to leased commercial and industrial property, burden of proof is on the taxpayer unless the taxpayer provides the county or district appraiser a complete income and expense statement for the three previous years. The income and expense statement shall be in a form acceptable to the court and shall be provided to the county after filing the notice of appeal.

Section 13 (Pg 14):

- Lowered interest rate on real property taxes unpaid to the rate prescribed by K.S.A. 79-2968 minus 2 percentage points.

Section 14 (Pg 15):

- Lowered interest rate on personal property taxes unpaid to the rate prescribed by K.S.A. 79-2968 minus 2 percentage points.

Section 15 through 129 (Pg 16 through the end):

- Amending sections to reflect name change from court to board.

THE KANSAS CHAMBER
UNITED FOR BUSINESS

Testimony before the House Taxation Committee
House Bill 2614
Presented by J. Kent Eckles, Vice President of Government Affairs
Wednesday, February 19th, 2014

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in favor of **HB 2614**. This bill makes several essential changes to the Court of Tax Appeals (COTA) in order to provide an affordable, accessible and impartial system that can resolve state and local tax disputes expeditiously and efficiently.

Background: As some members of the House Tax Committee may recall, the thought process of moving the Board of Tax Appeals (BOTA) to a Court of Tax Appeals (COTA) several years ago was to expedite the appeals process and thus lower costs for both the taxpayer and the State by taking the 5-member BOTA to a 3-member COTA. Additionally, it was suggested that paying the new 3-member board in line with district court judges would attract more talent to the board and thus result in a more fair and impartial tax appeals process. Based on their experiences with COTA however, the feedback our members have given us paints a very different picture – a picture suggesting Kansas has one of if not the very least affordable, accessible and impartial tax appeals processes in the entire country. As a result, it is costing residential and commercial taxpayers millions of dollars annually in attorney's fees and causing massive uncertainly for property taxpayers throughout Kansas and those looking at relocating here.

All the changes contained within **HB 2614** are based on direct feedback from our members and are based on their negative experiences with the Court of Tax Appeals (COTA). Among them are:

- Changes the name of the administrative agency back to the Board of Tax Appeals. The members of COTA are not judges and the agency is not a court.
- Changes member's salaries to that of Entry Level Administrative Hearing Officers for Small Claims and to Entry Level Administrative Law Judges for the Regular Division. This is a step down from their current pay of District Court Judges.
- Current statute provides for removal of cause of members of COTA but there is no effective means to accomplish this. This bill states that they may be removed for cause in Shawnee County District Court and that cause includes; not maintaining currency with education and training requirements and not making rulings within 120 days, which is a required statutory deadline but is routinely ignored by the agency because there is no remedy.
- This bill requires the agency to render decisions per existing statute in 120 days. Failing to do so results in the agency refunding taxpayer filing fees from agency funds. Further, if a prior year's appeal has not been decided, the agency is prohibited from collecting the next year's filing fees.
- The agency's orders can be appealed to either District Court in which the taxpayer resides or to the Court of Appeals, whichever the appellant decides.
- In order to further expedite appeals, the bill raises the threshold value from $2m to $5m for cases to be heard by the Small Claims & Expedited Hearings Division.

- The bill states that the agency may not determine public policy issues such as; who may sign appeals forms, who may represent taxpayers at the various levels of the appeals process, what constitutes the unauthorized practice of law; that the agency cannot interfere, via action or non-action with settlement agreements between counties and taxpayers; and whether or not a contingency fee arrangement is violation of public policy. None of the aforementioned is within the purview of the agency.
- The bill changes from a system of annual appraisals to an every other year appraisal system, allowing for greater stability and certainty for the taxpayer and would certainly reduce costs at the County level. Taxpayers would still be able to appeal their appraisals.
- States that a property-specific appraisal performed by a Certified General Appraiser must be accepted by the agency. These tend to be much more accurate than mass real estate appraisals.
- Requires a simultaneous exchange of appraisals between the taxing entity and the taxpayer through the discovery process. Currently, taxpayers are at a massive disadvantage by having only 30 days before a COTA hearing to review the county's appraisal, while the county has had the taxpayer's for months.
- Finally, the bill requires the agency to publish a monthly report on its' website and transmit said report to the legislature containing a list of all cases it has decided each month, including those over 120 days old.

In closing, the Chamber and its members believe the changes incorporated in **HB 2614** will make the tax appeals process in Kansas a much more affordable, accessible and impartial one that can resolve state and local tax disputes expeditiously and efficiently.

We urge the Committee to pass favorably **HB 2614.**

The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.

835 SW Topeka Blvd Topeka, KS 66612 785.357.6321 kansaschamber.org

TESTIMONY IN SUPPORT OF HB2614
Linda Terrill, Property Tax Law Group, LLC

To:

The Honorable Representative Richard Carlson, Chairman;
The Honorable Representative John Edmonds, Vice-Chair;
The Honorable Representative Tom Sawyer, Ranking Minority Member and
Distinguished Members of the House Taxation Committee:

Thank you for this opportunity to provide testimony to support HB2614.

My name is Linda Terrill. With my husband, Ben Neill, I own a small boutique law firm, Property Tax Law Group, LLC, specializing in representing commercial taxpayers in state and local tax appeals.

I have attached a firm profile that describes our law practice and lists some representative taxpayers and counties we have been privileged to represent over the years.

My practice in this field began in the 1980's when I was appointed to serve as the General Counsel to the Board of Tax Appeals. I have represented taxpayers and taxing subdivisions in various matters since that time.

I am here primarily due to the events that occurred in September of 2012 when COTA initiated a war on tax consultants and attorneys that take referrals from them. This was initiated by them with no request or demand from any party, any county or anyone. The practice of consultants representing taxpayers at the local level and through the Small Claims level has proceeded unchanged for as long as I have been involved in the practice and was the practice even prior to my time with the Board of Tax Appeals.

Perhaps I will know someday what caused COTA to raise and decide and issue not before them and issue Orders exercising non-existent equitable powers and voiding contracts, interfering with a taxpayer selecting counsel of their choosing, wandering over into the domain of the Attorney General and making determinations about what constitutes the unauthorized practice of law, stepping on the legislative powers to determine public policy and commandeering the powers of the Kansas Supreme Court to regulate the practice of law. But I do not know now. Those issues are on appeal and may even be decided in other judicial forums.

I will not discuss those issues except to state it is imperative that taxpayers have a fair, unbiased tribunal to try their issues where the adversarial party is the other side and not the agency hearing and deciding the case. The taxpayers are entitled to have an agency that implements the laws passed by this legislature instead of putting into place rules and regulations that remove the protections given taxpayers by statute. Taxpayers should be permitted to hire the tax professional or tax counsel of their choosing without interference from COTA. Taxpayers need an agency dedicated to hearing and resolving disputes expeditiously and efficiently rather than one that wastes time and tax dollars on issues no one has ever complained of or raised in any appeal. Finally, all parties have a right to be treated with respect.

Many provisions in HB2614 constitute an outstanding first step in reforming the property tax appeal system such as:

- Requiring a decision within a statutory timeframe after the case is fully submitted and, if not, refunding the filing fee to the taxpayer;
- Clarifying the burden of proof on leased commercial property tax appeals;
- Allowing a taxpayer to file for a subsequent year without paying a filing fee if their prior year's appeal is still pending at COTA;
- Requiring COTA to have a mutual exchange of expert exhibits;

And

- Clarifying COTA is not to 1) determine public policy, 2) determine what constitutes the unauthorized practice of law, 3) dictate who a taxpayer can contract with and the terms of the arrangement or 4) dictate who can sign an appeal form.

I have also attached a detailed description of problems taxpayers face due to the one-sided pre-hearing process put in place by COTA. It is lengthy but it has actual examples of matters demonstrating the problems at COTA are caused by COTA, not taxpayers, tax consultants and/or tax attorneys.

Thank you for your time. I am asking for your support of HB2614.

PTLG, LLC. FIRM PROFILE AND EXPLANATION OF ITS REPRESENTATION OF TAXPAYERS THAT HAVE BEEN REFERRED TO ME BY TAX CONSULTING FIRMS.

What is Property Tax Law Group, L.L.C.?

From 1984 to 1986, I served as General Counsel to the Kansas Board of Tax Appeals for the State of Kansas. Even though now known as the Court of Tax Appeals, ("COTA") it is still an administrative agency in the Executive Branch of government and not an Article III court. I attained my Juris Doctorate from Washburn University School of Law in 1981 and earned my Masters in Laws in Taxation from the University of Missouri - Kansas City in 1987. I am licensed to practice in Kansas.

After leaving my position as General Counsel, I have concentrated my law practice to the practice of state and local tax law. Over the years, my firm has had several names, adopting the name Property Tax Law Group, L.L.C. in 2012. The firm is a boutique law firm with all lawyers specializing in local tax controversy and planning in Kansas & Missouri.

Combined the attorneys here have over 100 years of experience in this field. The attorneys include:

Mr. Benjamin J. Neill. Ben earned his Juris Doctorate from Washburn University in 1968 and Masters of Law in Taxation from George Washington University School of Law. Ben formerly served Governor Robert F. Bennett's administration as the General Counsel for the Kansas Department of Revenue from 1975 – 1979. Subsequent to that, he has specialized in state and local tax law. Ben is licensed to practice in Kansas.

Mr. Wayne Tenenbaum, of counsel, is licensed in Missouri, and formerly served as the Assessor for Jackson County, Missouri. After graduating from National College with a B.A. in Economics, Wayne earned his Juris Doctorate from the University of Missouri – Kansas City in 1966.

Ms. Darcy Demetre Hill, graduated from the University of Kansas with a degree in Business Administration in 2003. She earned her Juris Doctorate from Washburn University is 2007.

Over the years, the firm has worked hard to establish its reputation in this field of law. The firm has represented many large local and national companies, including:

Taxpayers:

J.C. Penney Company, Inc. on all Kansas & Missouri sales tax and property tax matters since 1986.

YRC Worldwide (and predecessor companies) on various state & local tax issues since 1986, including representing YRC on the valuation of their corporate headquarters in Johnson County, Kansas for approximately the last 15 years.

Nebraska Furniture Mart on Kansas since 2003 and Nebraska matters since 2011.

Kansas Entertainment (Hollywood Casino) on Kansas property tax matters since 2011.

Cargill on Kansas & Nebraska property tax matters (2008 -2012) including successfully obtaining a reduction in value of approximately 12 Million dollars sustained by the Nebraska Supreme Court.

Best Buy for all property tax in Kansas and Missouri for over15 years.

Petsmart for all property tax matters in Kansas since 2004.

Belger Realty for all property tax matters in Kansas since 2006.

Deluxe Check for Kansas property tax matters from 1996 to 2008.

Felcor Properties in Kansas & Missouri since 1999.

Geiger Ready Mix in Kansas & Missouri since 1994.

General Electric on Kansas property tax matters since 2004.

Various Hermes Landscaping companies since 1996.

Honeywell International since 2007 on Kansas property tax matters.

Koch Industries on the valuation of their corporate headquarters in Wichita, Kansas since 2006.

KSU Golf on the valuation of Colbert Hills Golf Course since 2003.

Marriott Corporation in Kansas & Missouri on property tax matters since approximately 2003.

Red Speedway – Legends on property tax matters since 2004.

Resers Fine Foods since 2008 on Kansas property tax matters.

Sandstone Creek Apartments since 2004

Sears & K-Mart on all Kansas and Nebraska property tax appeals for over 5 years.

Target Corporation for their property tax appeals in Kansas & Nebraska since 2010.

Tri-Land Properties for approximately 4 years on Kansas properties.
Weingarten Realty Properties on Kansas properties

Yarco Properties for all their Kansas & Missouri property tax matters for over 20 years.

Counties:

My firm has represented many counties before COTA. Our representation was primarily in the defense of county valuations of grain elevators in approximately ½ of the counties in Kansas. These appeals were in the 1990's.

Represented Meade County appraiser in all commercial appeals before COTA from approximately 1991 to 2008.

Represented Finney County appraiser in all commercial appeals before COTA from approximately 1991.

The point of listing these is to lay the foundation why and how I can represent smaller taxpayers referred to me from tax consultants.

COTA has characterized the taxpayers typically represented by tax consultants as being "large" taxpayers. Actually, in my experience they are just the opposite. They include residential homeowners & owners of smaller local commercial buildings. These are taxpayers I typically could not justify the expense of representing. For instance, a residential taxpayer with a $400,000 valuation who believes the property is worth $350,000 may have an excellent appeal, but the total tax dollars are likely less than $750.00. This taxpayer cannot justify hiring PTLG on an hourly basis and I cannot justify working on a contingent fee basis. But, this taxpayer can, and frequently does, retain the services of a tax consultant that has appraisers on staff. These appraisers can take sales information into an informal hearing with an employee of the county appraiser's office and hopefully resolve the appeal. It is the most economical way for the taxpayer to prosecute a residential appeal. If they retained PTLG, we would have to get an appraisal from an outside appraiser and that would involve additional expenses and time.

If someone contacts me about a residential appeal, I will (1) offer to walk the homeowner through the process so they can do it themselves; or (2) refer them to a tax consultant or (3) take the case pro bono.

For commercial taxpayers, the value of the appeal may be greater but the analysis is the same. If there is a minimal amount of relief available, again, the taxpayer is better off utilizing the services of a tax consultant that can provide appraisal services at the informal or small claims level hoping to get the matters resolved without having to file on to the regular division of COTA.

COTA, in their Orders speculated and drew several inferences about why I, or PTLG, agree to take cases from tax consultants. None of the inferences were remotely correct. I can afford to represent these clients because of the less expensive appraisal services provided from the tax consultant and because the tax consultant is the designated representative facilitating communication throughout the appeal process.

A valid case can be made it does not make economic sense for PTLG to represent these taxpayers, but we do it because many are members of my Chamber of Commerce, or they are my local bank, my local grocery store, or belong to the same organizations, etc. And for most of them, I have represented them for several years. But for this arrangement, these individuals and companies likely could not retain me.

As example, in matters where I enter my appearance for taxpayers referred to me by tax consultants, the division of labor is clear. I provide legal services to the clients and J.W. Chatam provides appraisal services. Mr. Chatam is also the designated representative for these taxpayers and he facilitates communication and delivery of documents. Mr. Chatam meets with county appraiser employees to settle pending matters for these taxpayers from time to time, but these settlements are based on valuation arguments, not legal arguments. The county appraiser employees and Mr. Chatam are appraisers and their negotiations are limited to resolving the appropriate valuation of the property.

THE PRE-HEARING PROCESS ONCE A CASE IS FILED AT COTA: REGULAR DIVISION.

Because the practice of law is so very different in front of this administrative agency as opposed to an Article III court, it may be helpful to discuss the processes and problems. I apologize for the length of the explanations; however, it is crucial to understand the "practice of law" before this administrative agency to understand where COTA was wrong in their allegations against me, other tax practitioners, and tax consultants.

As it will be clear, the litigation process at COTA is unlike litigation in any Article III Court in Kansas. For instance, I am unaware of any district court that would require one side to disclose its entire case to the other side while protecting the other side from divulging its case until 20 days ahead of trial. The statutes don't direct it and the regulations don't expose it, yet, COTA has set up a system that is anything but a level playing field for taxpayers to argue about the valuations of their property. It is "gotcha" litigation at its worst and it is all sponsored by COTA. Additionally, COTA has adopted a pre-hearing procedure that is completely backwards. No court in Kansas would have the final pre-trial before both sides have fully exchanged their evidence. No court would have parties prepare a pre-trial order before the pre-trial. But, the process before COTA is that the taxpayer submits its case to the county, including its expert reports. Then both parties prepare a pre-trial order. The taxpayer has not seen the county's evidence at this point in time. Then after the Order is executed by COTA, COTA sets the matter for a pre-trial hearing. The process should be that after the parties have fully exchanged their respective cases, the matter should be set for pre-trial. The pre-trial will serve to identify the issues, resolve any procedural matters and issue a Pre-Trial Order memorializing the same.

In reality, the problems all are caused by their procedures. Taxpayers, tax consultants and/or counsel should ***not*** be blamed for the consequences that arise due to the obstacles instigated by COTA. Highly summarized, the problems are all due to (1) how long COTA to docket takes a case, (2) the COTA form Order Setting Discovery & Exchange Schedules (OSDES), (3) the one-sided nature of the OSDES form and the timing of the prehearing conferences.]

Here I summarize the process followed by a discussion of the problems caused:

1. ***Thirty (30) day statute of limitations to file an appeal:***

   Valuation appeals can arrive at the regular division of COTA either as an appeal from an informal hearing with the county appraiser's office or as an appeal from the Small Claims Division of COTA. In both cases, the statute of limitations to file is thirty (30) days from the date the results of either hearing were mailed.

2. ***Taxpayers' counsel files an Entry of Appearance. Counsel for the counties are not required to do so.***

3. ***Filing Fees:***

   The taxpayer transmits to COTA a filing fee, which is controlled by K.S.A. 74-2438a and K.A.R. 94-5-8. The case is officially docketed upon receipt of the filing fees.

4. ***Postcard notification from COTA:***

   COTA mails out a postcard acknowledging receipt of the appeal and assigning a docket number. In the past, this practice could take up to 60 – 90 days. Lately, we have received those 2 – 3 weeks after filing.

5. ***COTA Form Order Sent: "Order Setting Discovery & Exchange Schedules" (OSDES)***

   This form Order is sent on every commercial (non-residential) appeal

Perhaps, examples are the best way to point to the problems.

Why are so many cases filed?

Actual Case Study #1:

PTLG filed an appeal on behalf of a retail center in Wyandotte County, Kansas. It was filed on May 16, 2012. COTA took until Aug 8, 2012 or 85 days to send out the form "OSDES" (Attachment 1) These OSDES forms that are virtually identical for every commercial property tax appeal. The only differences are in the caption and the insertion of four (4) dates. You can see by looking at Attachment 1, that the date for the ***taxpayer to submit their expert report is February 4, 2013***, or about 3 weeks from the date that the county appraiser will be sending out the valuation for the **next** tax year. There is no way this appeal will be completed in the year it was filed, due to the order of COTA. The COTA dates ensure there will be a 2013 appeal filed. Arguably, maybe a 2014 appeal since litigated cases can take well over a year sometimes to get a decision.

Another example is depicted by a property tax appeal for a big box retail property in Shawnee County, Kansas and illustrates the problems triggered by COTA when they fail to act in a timely manner as directed by statute. (120 days under K.S.A. 74-2426.) The case was heard by COTA on January 12 – 13, 2009. The matter was fully briefed by the parties on March 5, 2009. After 488 days, or just over four times the time allowed by law, COTA

issued an Order on September 22, 2010 later overturned by the Court of Appeals on March 16, 2012. In the meantime, appeals have been filed and are stuck at COTA for the tax years 2008, 2009, 2010, 2011, and 2012.

Some have suggested that COTA delays completing the appeals to ensure that the taxpayer must file for the next year, guaranteeing another filing fee to be paid by the taxpayer to COTA since COTA must fund a large portion of their budget by filing fees. I don't know why the process is so slow; I just know that whenever COTA gets around to issuing the OSDES the ***taxpayer's*** expert report is set for 180 days from whenever COTA sends the OSDES and that is the date that begins the one-sided pre-trial exchange process.

Approximately three to four weeks after the taxpayer must provide to the county their expert report, COTA sets a pre-hearing conference. The conference is conducted prior to the date the county provides its report. The pre-hearing gets a hearing date and time.

Note that COTA does not require the county to exchange its expert report in the OSDES. COTA mandates that the county provide to the taxpayer their report under K.A.R. 94-5-21 or twenty (20) days prior to the hearing. Johnson County will extend that out to thirty (30) prior to trial. Shawnee, Sedgwick and Douglas insist on sticking with the 20 day timeframe of the regulation. Only two attorneys that represent counties will agree to a mutual exchange of expert reports. Both of these attorneys, Jarrod Kieffer and Michael Montoya, are "outside" counsel. All of the rest will not agree to a mutual exchange and do not have the report prepared until right before the exchange date to prevent us from obtaining it earlier through discovery.

I will have to reserve a date and time for the hearing at the pre-hearing conference because I still will not have the county's report and cannot fully evaluate the case until then. Why is it important to have the county report? The county report is the first time when I learn if they will stick with their original valuation, as they say in the pre-trial order, or are they advancing a new, lower valuation?

As an example:

I have attached print-out of our "events" page from Amicus for EQI Financing (W2007) (Attachment 2) It shows the following relevant dates:

January 30, 2012:	The taxpayer must exchange its expert report with the county on (or before) the date due of January 30, 2012.
April 27, 2012:	The County must identify its positions.
August 21, 2012:	The County is set to exchange its expert report on August 21, 2012 under K.A.R. 94-5-21. This August 21 date is 204

calendar days after the taxpayer had to exchange its report and exactly thirty (30) days prior to the hearing. Attachment 3 is the cover page from the report. It indicates it was prepared four (4) days prior to the exchange date and is the first time the county has indicated it will now be asking COTA to lower the valuation. Attachment 4 is a copy of the Notice of Service showing the exhibit was exchanged electronically on the 20th of August, 2012.

For the 2010 tax year, the county will not be advocating for the original valuation of $5,064,000 but instead will be sponsoring a valuation of $4,405,000.

For the 2011 tax year, the county will not be advocating for the original valuation of $5,064,000[1] but instead will be sponsoring a valuation of $4,581,000.

September 20, 2012: Hearing date.

In this case, as well as all others, I received the information from the county thirty days ahead of trial. I get exactly 30 days to begin preparation of my case against the county's evidence. It is at that time I can get the exhibit to the client, discuss it with the client, and work the information provided to see if the case will proceed to trial, settle or dismiss. In this example, the taxpayer did not accept the offer and is proceeding to trial. The county has filed a Partial Confession of Judgment (Attachment 5) confessing down to the valuations in their report. Once COTA approves the Confession, the county may process the reduction and shut off any further interest due on the refund. Johnson County filed the Partial Confession on September 20, 2012. COTA has failed to act timely causing the taxpayer the delay in the receipt of the refund and causing the county to accrue additional interest.

In summary, it takes little thought to see that the system COTA has established is very one-sided. COTA forces the taxpayer to play all of their cards while they protect the county from having to disclose anything until 20 to 30 days prior to trial. COTA even conducts a pre-hearing conference before they require the county to play their hand. Matters settle or dismiss immediately prior to the hearing date. Because that is the first time counsel and the taxpayer must see what the county case is and what valuation they will be advocating.

[1] The cover sheet contains a typographical error. The original valuations for 2010 and 2011 were both $5,064,000. The 2011 year incorrectly reads $5,604,000, or simply a transposition of numbers. See Attachment II-I Partial Confession of Judgment which contains the correct original valuations.

Actual Case #2:

COTA requires each parcel of property is appealed separately and each appeal has a filing fee due COTA. COTA will not permit consolidation at the time of filing, only after the filing for each parcel has been filed and all the fees collected will COTA permit consolidation.

For one taxpayer/client the problem is compounded because it is a condominium project. ***For 2011, over 110 appeals had to be filed for this single condo project***. The county appeared by a county appraiser employee and the taxpayers appeared by their tax consultant. Both sides were permitted to present their case. None were concluded in 2011.

The 2011 cases were set for hearing in 2012. The original hearing date was August 29, 2012. Without notice, hearing or due process, COTA issued an Order under threat of dismissal (Attachment II-L) that the taxpayers retain other counsel.

Because COTA could not get the 2011 cases set in 2011, ***another 110 plus*** appeals had to be filed for the 2012 tax year. These parcels were appealed again in 2013 because the 2011 and 2012 cases won't be over. Kansas reappraises every year and appeals must be filed each year or there is no avenue for tax relief available. By March 2013 this taxpayer could have over 350 cases filed and about $9,000.00 in filing fees paid to COTA before they even get a hearing in the regular division of COTA.

BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION APPEALS OF LEGENDS OF KC, L.P. FOR THE YEAR 2012 IN WYANDOTTE COUNTY, KANSAS	Docket No. 2012-4038-EQ Parcel ID #: 105-041-02-0-10-01-009.00-0 Docket No. 2012-4206-EQ Parcel ID #: 105-041-02-0-20-03-003.00-0

ORDER SETTING DISCOVERY AND EXCHANGE SCHEDULES

Standard Discovery and Exchange Schedule

1. Rules Governing Discovery. All discovery conducted in any case or application before the Court shall be conducted in accordance with the Kansas code of civil procedure, the procedures authorized under the provisions of the Kansas administrative procedures act (K.S.A. 77-522 and amendments thereto), or both. If any deadline listed below falls on a Saturday, Sunday or legal holiday, the deadline shall be the end of the next date which is not a Saturday, Sunday or legal holiday. K.S.A.60-206.

2. Non-Expert Discovery Deadline. Any party wishing to issue discovery, not including depositions, which pertains to any matter other than expert opinions shall have issued said discovery on or before November 6, 2012.

3. Certificates of Service. Certificates of service for all discovery transactions shall be filed with the Court. Discovery responses, including without limitation interrogatory responses, documents, or other items produced pursuant to discovery requests shall not be filed with the Court.

4. Discovery Out of Time. Any request for discovery under paragraph 2 herein not made on or before November 6, 2012 must be made by means of filing with the Court, and serving upon the party from which the discovery is requested, a motion for leave to issue discovery out of time. Such motions must set forth specific and detailed reasons to establish *prima facie* good cause as to why the discovery request is appropriate and why the discovery request could not have been made within the discovery period provided for in paragraph 2 herein. Any such motion that does not set forth specific and detailed reasons to establish good cause will be summarily denied.

5. Taxpayer Expert Witness Report. On or before February 4, 2013, the taxpayer shall have disclosed in writing to the taxing authority the identity of all persons expected to testify as expert witnesses in the taxpayer's case in chief and

ATTACHMENT 1

shall have provided to the taxing authority a copy of the written appraisal (or other expert report) for each expert witness identified. The taxpayer shall also file a certificate of service with the Court.

6. Prehearing Conference Scheduling. A telephone prehearing conference is scheduled for **Wednesday, February 27, 2013, at 01:30PM.** The Court will initiate the telephone all to each party as follows:

Linda Terrill	(913) 814-8900
Ryan Carpenter	(913) 573-5076

The parties shall contact the Court with any new or additional telephone numbers prior to the conference. The parties shall confer in good faith, either in person or by telephone, prior to the prehearing conference in an attempt to resolve the dispute.

7. Prehearing Order. The parties shall prepare and submit to the Court a joint proposed prehearing order. The proposed prehearing order shall be a joint effort of all parties. The parties have an equal obligation to participate fully in preparation of the prehearing order. The parties shall exchange completed prehearing questionnaires at least ten (10) days prior to the prehearing conference. Appellant or counsel for the appellant shall be responsible for preparing the proposed prehearing order for signatures and submitting the order to the Court at least five (5) days prior to the prehearing conference. A single proposed order shall be submitted. Any disagreements should be noted in sufficient detail to enable the presiding officer to address the dispute at the prehearing conference. Failure to timely submit the proposed prehearing order as required herein may result in a proposed default order dismissing the appeal pursuant to K.S.A. 77-520 or other appropriate action.

Joint Modified Scheduling Orders

1. Joint Modified Scheduling Orders. In cases involving special use or unique properties, unsettled points of law, or which otherwise require a modified discovery and pre-hearing schedule, counsel or the parties shall confer and jointly prepare and submit in writing for approval by the Court a Joint Modified Scheduling Order on before December 6, 2012. In cases where the taxpayer elected to obtain an expert witness or witnesses and complied with paragraph 5 herein, the parties may confer and jointly prepare and submit in writing for approval by the Court a Joint Modified Scheduling Order at least ten (10) days prior to the prehearing conference.

2. Content of Joint Modified Scheduling Orders. A Joint Modified Scheduling Order shall, at minimum, address the following: (a) the scope and timing of discovery, including whether bifurcation or staging of discovery would help make discovery more efficient; (b) consolidation of dockets for discovery and/or hearing; (c) discovery of expert witnesses, including timing of expert identification, exchange of expert reports, and depositions of experts; (d) deadlines for summary judgment and other motions and briefs; and (e) continuance and re-scheduling of the prehearing conference if necessary; and (f) any other appropriate discovery or scheduling matters. Upon approval by the Court, the parties' Joint Modified Scheduling Order shall supersede this Order Setting Discovery and Exchange Schedules.

ORDERED: August 8, 2012

SEAL

THE COURT OF TAX APPEALS

SAM H. SHELDON, PRESIDING OFFICER

CERTIFICATE OF SERVICE

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2012-4038-EQ and 2012-4206-EQ, and any attachments there to, was served by depositing the same in the United States mail, postage pre-paid, on the 8th day of August, 2012 addressed to the following:

Legends of KC LP
1801 Village West Pkwy
Kansas City, KS 66111

Legends of KC LP
4717 Central
Kansas City, MO 64112

Linda Terrill, Attorney
Property Tax Law Group LLC
11350 Tomahawk Creek Pkwy Ste 100
Leawood, KS 66211

Eugene Bryan, County Appraiser
Wyandotte County Annex
8200 State Ave
Kansas City KS 66112

Ryan Carpenter, Asst County Counselor
Wyandotte County Courthouse
701 N 7th St, Room 961
Kansas City KS 66101

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

Joelene R. Allen

Joélene R. Allen, Secretary

Property Tax Law Group, LLC.
Linda Terrill
EQI Financing II 046-074-17-0-20-02-006.01-0 (2010)
Files > Facts > Events > My Events

Printed by: Linda Terrill

Date	Time/Priority	Title	Due/Days
11/11/2010	Done	2010-6458-EQ NON EXPERT DIS DEADLINE	
01/26/2011	Done	2010-6458-EQ DEADLINE TO RESPOND TO CO DIS REQUESTS-extension granted	
03/04/2011	Done	2010-6458-EQ JMSO	
03/28/2011	Done	2010-6458-EQ TP EXPERT WITNESS REPORT	
08/17/2011	09:00 AM to 09:30 AM	2010-6458-EQ PTH	
11/16/2011	Done	2010-6458-EQ PTQ	
11/16/2011	Done	2010-6458-EQ PTO DUE	
01/30/2012	Done	2010-6458-EQ & 2011-4696-EQ TP EXPERT REPORT	
03/28/2012	Done	90 Day Reminder for HEARING	
04/27/2012	Done	2010-6458-EQ & 2011-4696-EQ ID Who bears burden, Witnesses & Statement of Issues	
07/20/2012	Done	2010-6458-EQ & 2011-4696-EQ DEADLINE FOR ANY ADDITIONAL DISCOVERY-COTA AGREED CONTINUANCE None	
07/23/2012	Done	60 Day Reminder for HEARING	
08/21/2012	Done	Cutoff for Depos and Subpoenas	
08/21/2012	Done	Exchange Exhibits	
08/21/2012	Done	30 Day Reminder for HEARING	
08/22/2012	Done	2010-6458-EQ & 2011-4696-EQ Deadline to accept Co offer to settle Did not accept	
08/31/2012	Done	Deadline for all Pretrial Motions	
09/02/2012	Done	Deadline for Reubttal Evidence None	
09/05/2012	Done	15 Day Reminder for HEARING	
09/20/2012	09:00 AM to 05:00 PM	2010-6458-EQ & 2011-4696-EQ HEARING	

ATTACHMENT 2

COMPUTER ASSISTED MASS APPRAISAL REPORT
With Supporting Documentation
Pursuant to K.S.A. 79-504
Jurisdictional Exception Invoked to USPAP 1992, Standard 6-7 and 6-8

Intended User:

Court of Tax Appeals of the State of Kansas

Intended Use:

Ad Valorem Valuation Litigation Defense

2010 Docket Number:

2010-6458-EQ

2011 Docket Number:

2011-4696-EQ

Kansas Unified Parcel Number:

046-074-17-0-20-02-006.01-0

Legacy Parcel Number:

NP63400003 0006B

Property Owner of Record and Situs:

W2007 Equity Inns Realty, L.L.C.
Hyatt Place
6801 West 112th Street
Overland Park, Kansas

Effective Date of Valuation:

January 1, 2010

Effective Date of Valuation:

January 1, 2011

Appraised Value Appealed:

$5,064,000

Appraised Value Appealed:

$5,604,000

Appraised Value Recommended:

$4,405,000

Appraised Value Recommended:

$4,581,000

Valuation Method:

Income Approach

Johnson County Appraiser's Office
Prepared by Stan Moulder, CAE, RMA
COTA Specialist

ATTACHMENT 3

BEFORE THE COURT OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPEALS OF
W2007 EQUITY INNS REALTY LLC **Docket Nos. 2010-6458-EQ &2011-4696-EQ**

NOTICE OF SERVICE OF JOHNSON COUNTY'S EXHIBIT(S) AND IDENTIFICATION OF WITNESS(ES)

The Board of County Commissioners through the county appraiser (County) by counsel, **Kathryn D. Myers**, assistant county counselor, notifies the Court that it served its exhibit(s) 1 and 2 on the taxpayer **August 20, 2012**and that **Stan Moulder** or other designee of the County appraiser, will testify as witnesses.

Filed by,

Kathryn D Myers

KATHRYN D. MYERS, 14830
ASSISTANT COUNTY COUNSELOR
111 S CHERRY STE 3200
OLATHE KS 66061-3451
913-715-1858
913-715-1873 FAX
Kathryn.Myers@jocogov.org
Attorney for Board of County Commissioners Of Johnson County, Kansas

CERTIFICATE OF SERVICE

I certify that the above was mailed August 20, 2012 addressed to:

LINDA A TERRILL
PROPERTY TAX LAW GROUP
lterrill@ptlg.net

Kathryn D Myers

Kathryn D. Myers

ATTACHMENT 4

BEFORE THE COURT OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE **APPEAL OF**
W2007 EQUITY INNS REALTY LLC

Docket Nos. 2010-6458-EQ
& 2011-4696-EQ

ORDER ON CONFESSION OF JUDGMENT

The Board of County Commissioners of Johnson County, Kansas through the County appraiser by Kathryn D. Myers, assistant county counselor, states as follows:

1. The Subject of these appeals is NP63400003 0006B (0460741702002006010).

2. The values appealed by the Taxpayer is $5,064,000.00 for 2010 and 2011.

3. Should this matter proceed to an evidentiary hearing, the County will recommend to the Court a value no greater than $4,405,000.00 for 2010 and $4,581,000.00 for 2011.

4. It is understood that the Taxpayer may continue with this appeal to a final decision in hopes of achieving a further reduction of value or the Taxpayer, if satisfied with this confession of judgment, may dismiss the appeal once an order on this motion is issued.

IT IS ORDERED that the value of the Subject shall immediately be corrected to $4,405,000.00 for 2010 and $4,581,000.00 for 2011 to implement this confession of judgment pending further adjudication of this matter.

THE COURT OF TAX APPEALS

Sam H. Sheldon, Chief Judge

Trevor C. Wohlford, Judge

James D. Cooper, Judge

ATTACHMENT 5

Testimony to House Taxation Committee
HB 2614 Property Valuation and Appeals
February 19, 2014
Dave Trabert, President

Chairman Carlson and members of the Committee:

We appreciate this opportunity to present written testimony in support of HB 2614, which will provide much-needed property tax reform to Kansas residents. Kansas Policy Institute has been in engaged in property tax issues for several years and the unfairness of the appeals process is one of the most frequent complaints.

Perhaps nothing demonstrates this more clearly than the large volume of tax appeals than have decided in the favor of taxpayers or settlements that have been reached after an appeal has been referred to the Court of Tax Appeals. As shown on the attachment to this testimony, 47 percent of the nearly 12,000 residential and commercial cases heard by COTA between 2006 and 2008 were decided in favor of the taxpayer. That's an astonishing rate of rejection by a court.

Another 6,300 cases were settled before going to court; counting all cases where taxpayers were granted full or partial relief from excessive valuations, 65 percent of the appeals were decided in favor of taxpayers. The Open Record request that produced this information four years ago has not been updated, but we continue to hear the same complaints from taxpayers.

Among its many positive reforms, HB 2614 directly addresses some of the most egregious complaints we've heard from property owners:

- ✓ Counties must accept an appraisal from a Certified General Appraiser. We've heard countless stories of counties rejecting independent appraisals that show the county appraisal is grossly overstated.

- ✓ The Court of Tax Appeals (proposed to become the Board of Tax Appeals) would no longer be able to arbitrarily set public policy issues such as who may sign appeal forms and who may represent taxpayers at the different levels of the appeal process.

- ✓ Any appraisal made by the county or district appraiser must be released through the discovery process to the taxpayer, the taxpayer's attorney or the taxpayer's representative. Taxpayers currently complain that county appraisals are withheld so as to limit the time available for review.

HB 2614 does not restrict government's ability to value property or raise taxes in any way. It merely corrects a number of inequities in the valuation and appeals process and we encourage the committee to report it out favorably.

Court of Tax Appeals - Res. and Comm. Combined

	2006 to 2008 Cases			Cases Heard		Some / All Taxpayer Favor	
	Granted	Denied	Stipulated	Granted	Denied	Granted & Stipulated	Denied
Allen	0	2	3	0%	100%	60%	40%
Anderson	3	2	1	60%	40%	67%	33%
Atchison	5	5	16	50%	50%	81%	19%
Barber	4	4	0	50%	50%	50%	50%
Barton	30	52	32	37%	63%	54%	46%
Bourbon	6	1	2	86%	14%	89%	11%
Brown	11	1	3	92%	8%	93%	7%
Butler	337	378	225	47%	53%	60%	40%
Chase	0	4	2	0%	100%	33%	67%
Chautauqua	2	0	1	100%	0%	100%	0%
Cherokee	1	8	18	11%	89%	70%	30%
Cheyenne	0	0	0				
Clark	0	6	0	0%	100%	0%	100%
Clay	0	2	3	0%	100%	60%	40%
Cloud	0	0	0				
Coffey	0	1	2	0%	100%	67%	33%
Comanche	11	7	19	61%	39%	81%	19%
Cowley	10	31	22	24%	76%	51%	49%
Crawford	11	35	25	24%	76%	51%	49%
Decatur	0	0	0				
Dickinson	39	33	20	54%	46%	64%	36%
Doniphan	1	1	3	50%	50%	80%	20%
Douglas	201	309	289	39%	61%	61%	39%
Edwards	0	0	0				
Elk	0	3	1	0%	100%	25%	75%
Ellis	8	8	7	50%	50%	65%	35%
Ellsworth	3	6	3	33%	67%	50%	50%
Finney	43	43	537	50%	50%	93%	7%
Ford	2	6	15	25%	75%	74%	26%
Franklin	195	25	14	89%	11%	89%	11%
Geary	10	14	10	42%	58%	59%	41%
Gove	0	0	1			100%	0%
Graham	4	4	4	50%	50%	67%	33%
Grant	18	0	0	100%	0%	100%	0%
Gray	1	6	5	14%	86%	50%	50%
Greeley	0	0	0				
Greenwood	0	2	1	0%	100%	33%	67%
Hamilton	0	0	0				
Harper	1	6	1	14%	86%	25%	75%
Harvey	0	3	1	0%	100%	25%	75%
Haskell	0	0	2			100%	0%
Hodgeman	0	1	0	0%	100%	0%	100%
Jackson	16	9	1	64%	36%	65%	35%
Jefferson	11	22	10	33%	67%	49%	51%
Jewell	0	1	0	0%	100%	0%	100%
Johnson	1266	1142	2096	53%	47%	75%	25%
Kearny	0	1	0	0%	100%	0%	100%
Kingman	5	9	5	36%	64%	53%	47%
Kiowa	0	0	1			100%	0%
Labette	16	15	6	52%	48%	59%	41%
Lane	0	0	0				
Leavenworth	61	69	83	47%	53%	68%	32%
Lincoln	0	9	0	0%	100%	0%	100%
Linn	1	6	1	14%	86%	25%	75%

Source: Kansas Court of Tax Appeals; combined results of Small Claims and Regular Division

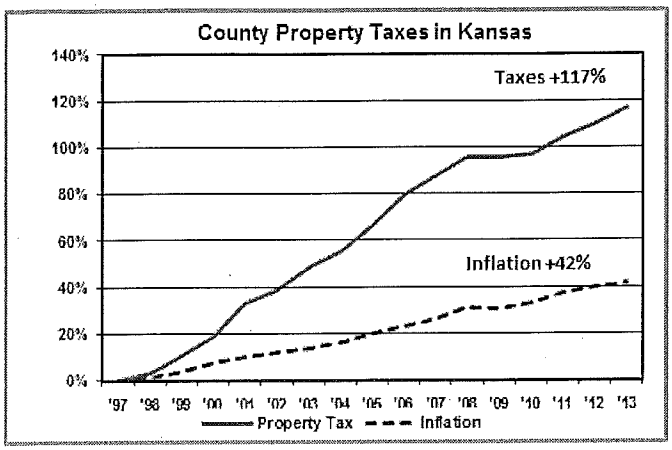
'Granted' includes relief in whole or part; 'Stipulated' includes cases resolved by the parties without a decision on the merits

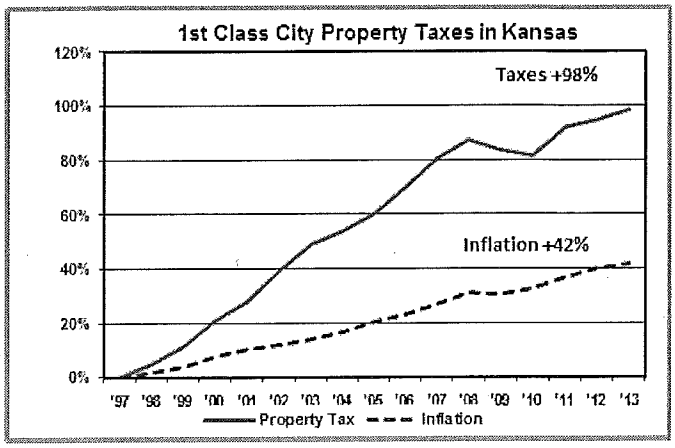
Court of Tax Appeals - Res. and Comm. Combined

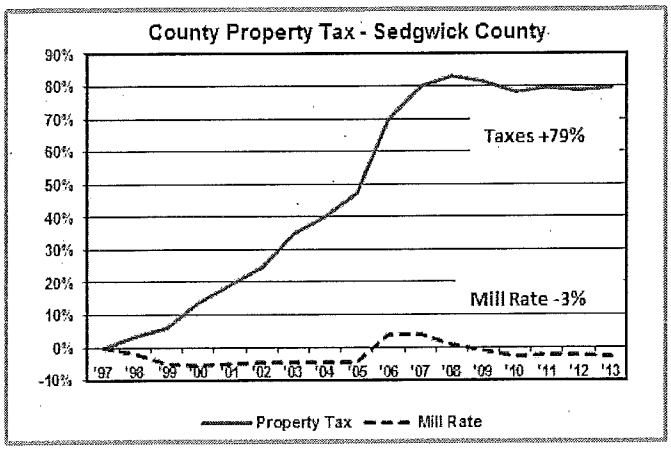
	2006 to 2008 Cases			Cases Heard		Some / All Taxpayer Favor	
	Granted	Denied	Stipulated	Granted	Denied	Granted & Stipulated	Denied
Logan	0	0	0				
Lyon	123	20	10	86%	14%	87%	13%
Marion	8	15	11	35%	65%	56%	44%
Marshall	0	0	0				
McPherson	2	10	10	17%	83%	55%	45%
Meade	0	0	0				
Miami	65	61	61	52%	48%	67%	33%
Mitchell	1	1	0	50%	50%	50%	50%
Montgomery	9	13	23	41%	59%	71%	29%
Morris	73	5	0	94%	6%	94%	6%
Morton	1	2	2	33%	67%	60%	40%
Nemaha	1	2	1	33%	67%	50%	50%
Neosho	12	15	17	44%	56%	66%	34%
Ness	1	3	25	25%	75%	90%	10%
Norton	0	0	0				
Osage	140	27	12	84%	16%	85%	15%
Osborne	1	0	0	100%	0%	100%	0%
Ottawa	0	2	0	0%	100%	0%	100%
Pawnee	6	18	3	25%	75%	33%	67%
Phillips	0	1	1	0%	100%	50%	50%
Pottawatomie	2	7	9	22%	78%	61%	39%
Pratt	3	4	11	43%	57%	78%	22%
Rawlins	0	0	0				
Reno	61	71	48	46%	54%	61%	39%
Republic	0	0	0				
Rice	0	0	9			100%	0%
Riley	5	140	135	3%	97%	50%	50%
Rooks	1	5	1	17%	83%	29%	71%
Rush	0	0	0				
Russell	19	3	7	86%	14%	90%	10%
Saline	111	238	101	32%	68%	47%	53%
Scott	0	0	0				
Sedgwick	1003	1657	1344	38%	62%	59%	41%
Seward	1	38	7	3%	97%	17%	83%
Shawnee	355	414	352	46%	54%	63%	37%
Sheridan	3	5	0	38%	63%	38%	63%
Sherman	0	1	0	0%	100%	0%	100%
Smith	0	2	1	0%	100%	33%	67%
Stafford	4	6	2	40%	60%	50%	50%
Stanton	0	0	0				
Stevens	39	1	0	98%	3%	98%	3%
Sumner	41	90	29	31%	69%	44%	56%
Thomas	0	0	0				
Trego	0	0	0				
Wabaunsee	0	5	8	0%	100%	62%	38%
Wallace	0	0	0				
Washington	1	2	0	33%	67%	33%	67%
Wichita	0	0	0				
Wilson	1	2	1	33%	67%	50%	50%
Woodson	4	0	0	100%	0%	100%	0%
Wyandotte	1105	1075	590	51%	49%	61%	39%
	5535	**6253**	**6322**	**47%**	**53%**	**65%**	**35%**

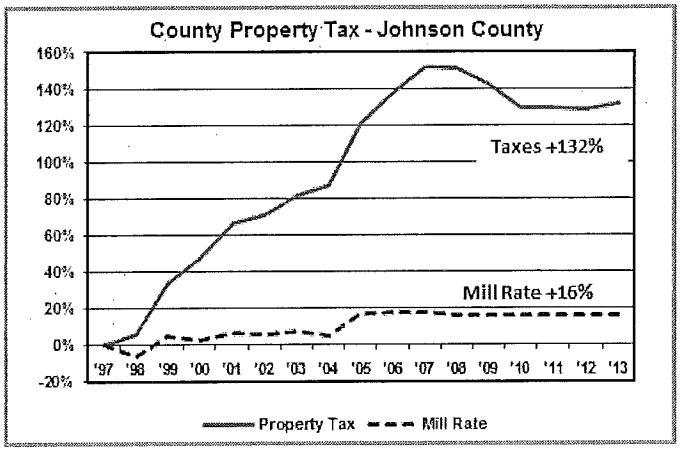
Source: Kansas Court of Tax Appeals; combined results of Small Claims and Regular Division
'Granted' includes relief in whole or part; 'Stipulated' includes cases resolved by the parties without a decision on the merits

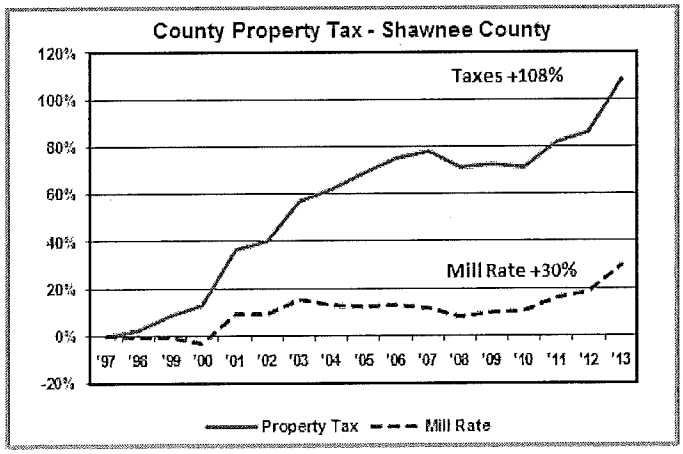
Kansas Property Tax Trend

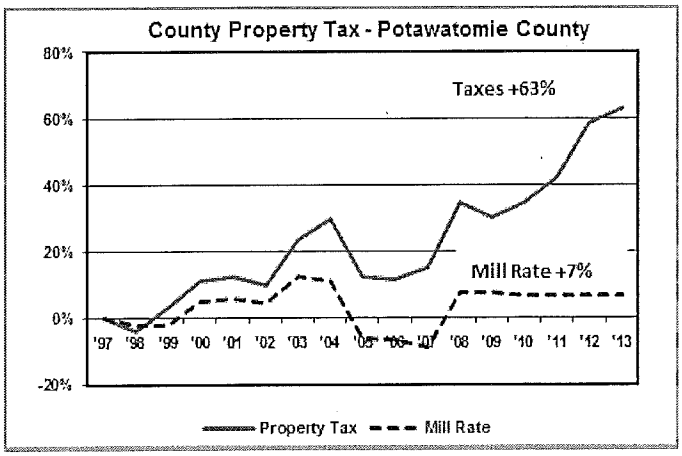




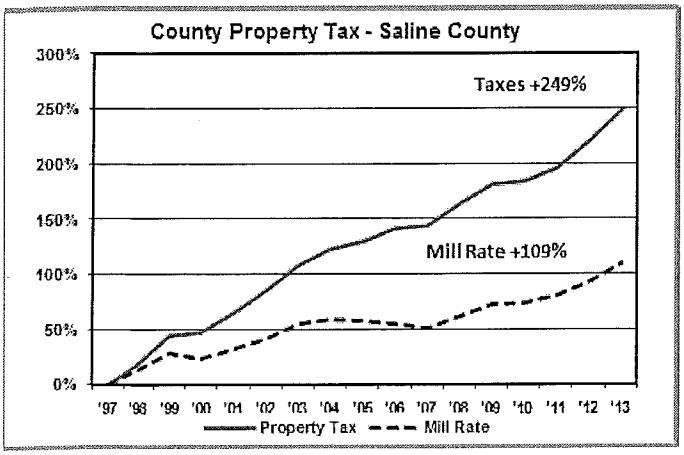


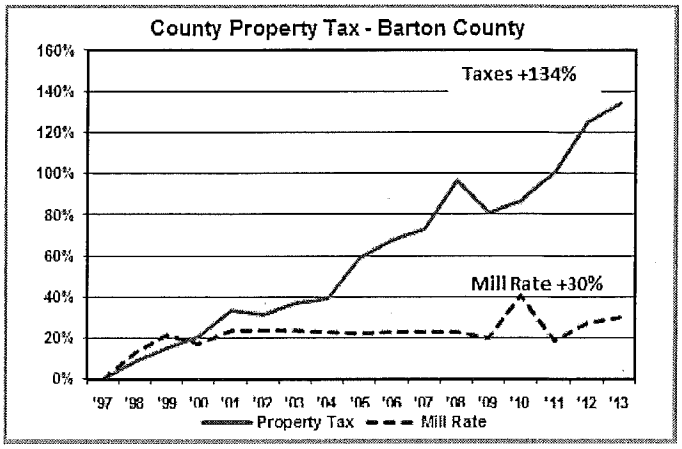


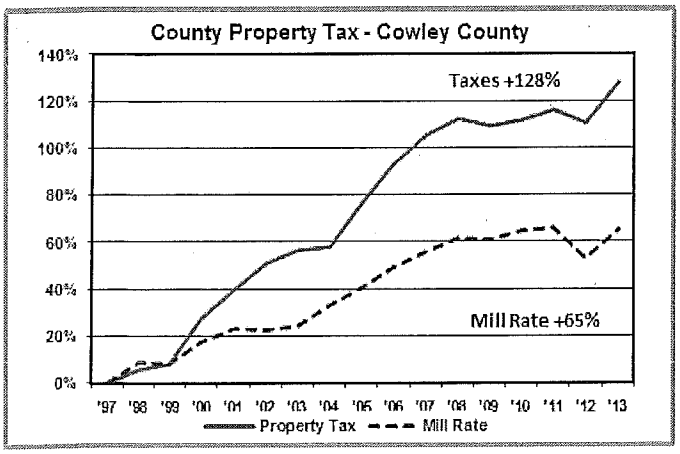


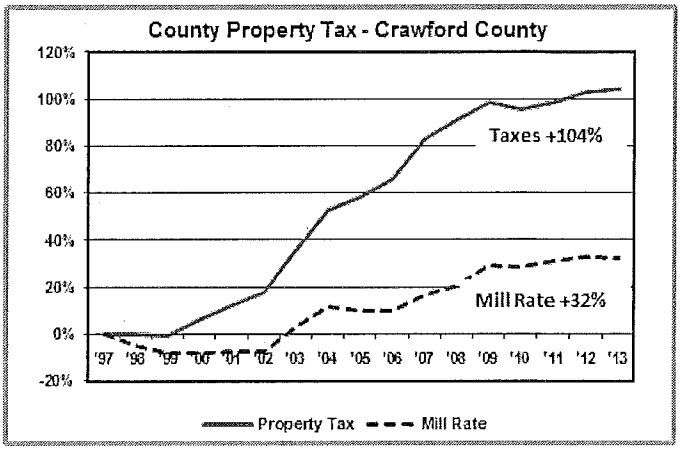


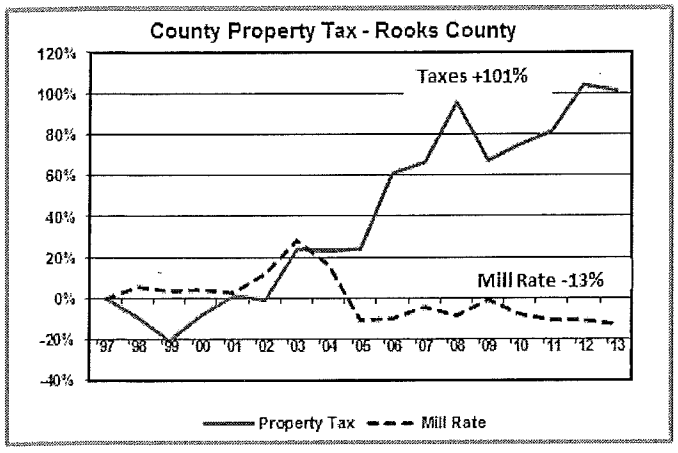
Source: Kansas Department of Revenue, Property Valuation Division

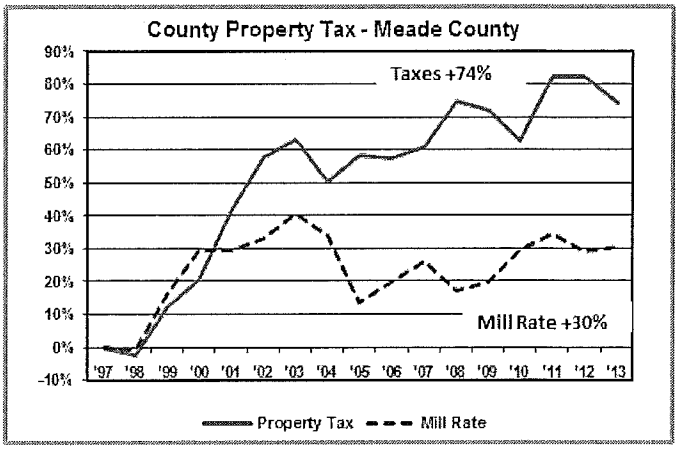












Source: Kansas Department of Revenue, Property Valuation Division

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February 19, 2014

TO: KANSAS HOUSE TAXATION COMMITTEE

RE: HOUSE BILL No. 2614 (Court of Tax Appeals Reform, etc.)
WRITTEN TESTIMONY

Dear Members of the House Taxation Committee:

Thank you very much for your time today. I greatly appreciate your time this week in reviewing HB 2614 along with reading, hearing and considering testimony pertaining to requested changes and/or additions to the bill. I must commend the members of the Kansas Chamber of Commerce and others in the legislature for their hard work and assistance over the past several months with moving forward in an attempt make these changes which will help Kansas taxpayers.

I must first emphasize that both countless commercial and residential property taxpayers throughout Kansas are very pleased that progress is being made at this time in order to do hopefully make some seriously needed changes in the property tax arena. These changes would do the following:

#1: Help "level the playing field" for taxpayers in terms of making changes to the process of valuation of residential and commercial property for property tax purposes.

#2: Modifying the process of filing, hearing and settling property tax valuation appeals, property tax protests, etc .

#3: Provide property taxpayers in Kansas additional fair, reasonable and equitable treatment in the valuation and appeal process.

If converted into new law, the submitted and requested changes for HB 2614 will only make everything more streamlined and help provide any Kansas property taxpayer some added relief from the stress it takes to operate at a profit whether such taxpayer is the actual property owner, a business owner, an investor and/or a tenant whether that tenant is in the form of a retail business, manufacturer, service and sales business along with the countless other businesses throughout Kansas. Everyone in this room today already realizes the fact that we need to do everything reasonably possible to retain the taxpayers, property owners businesses, investors and residents in Kansas in order to attract more job and retain the jobs which currently exists.

Please note that the mission of the Kansas Chamber of Commerce is "to continually strive to improve the economic climate for the benefit of every business and citizen and to safeguard our system of free, competitive enterprise". That about says it all !! That is what we must do in order to continue to enhance and stimulate the image of Kansas so that we can attract further investment, growth and more hardworking taxpayers from outside our borders. But first we must help enhance the marketability, profitability and growth of existing Kansas businesses!! How that can be done is with the initiation of the changes, additions and modifications in HB 2614.

Why do I support House Bill 2614 ? Well, here's a little about my background, experience and qualifications:

I've been serving commercial and residential property owners, investors and businesses in the property tax appeal/protest process since 1982. I've handled appeals in at least 36 states. Before I ventured into business, I was a residential and commercial appraiser with the Sedgwick County Appraiser's Office in 1981 and 1982. I even testified for the county at the former Board of Tax Appeals (but I was always fair to the taxapayer). I also obtained my Kansas real estate license in 1978 when I was 19 and I was also working with an auctioneering business all the time while I obtained a major in real estate and land use economics at Wichita State University (Go Shox!!). I've been a real estate broker since 1986. I'm also a residential and commercial property owner and I've managed properties for 20+ years. I also owned a restaurant in the mid-90's so I'm well aware of what it takes to operate a very competitive business on main street.
I am a Certified Member of the Institute for Professionals in Taxation (www.ipt.org). I'm one of maybe 500+- in the U.S. who hold the CMI designation in the field of property taxation. I've handled most every kind of appeal/protest for every kind of commercial property the past 32 years.

REAPPRAISING REAL PROPERTY EVERY OTHER ODD YEAR: As I annually work with and represent property taxpayers, the number one complaint I hear from them is that they cannot understand why their value has radically increased in say, the current year, when we just helped them obtain a property tax valuation reduction for the immediate preceding tax year. The state of Missouri reappraises all property every other odd year and it works quite well for both the taxpayer AND the local taxing authorities including the county assessors (county appraisers). At least the taxpayer can better predict what their tax liability will be for two consecutive years. The workload of each county assessor is substantially lessened as they do not have as many valuation appeals to handle in the even years. The taxpayer still has a right to appeal their value in the even years but the volume of appeals in the even years is minimized for the county assessor. The assessor still has a right to make changes to a value in the even tax years if there is an addition to the property, etc. It can many times take several months even over a year or almost two years to settle some property valuation appeals. With a reappraisal every other odd year, there would not be as many over-lapping appeals placing stress on the both the taxpayer and also placing added pressure on the county appraisers, legal departments, etc.

COTA SMALL CLAIMS DIVISION: INCREASING THE VALUE TO $5 MILLION FROM THE CURRENT $2 MILLION;
Relative to the requested change in the COTA Small Claims Division hearing process, I'm definitely in favor of increasing the value to at least $ 5 million (per parcel) from the current $2 million. I'm actually proposing that there should be NO LIMIT on the dollar amount appealed and heard for any parcel and the Small Claims Division should have a name change to the "Equalization Division". The state of Tennessee has a very fine streamlined appeal process and what's called the "Tennessee State Board of Equalization". The Tennessee SBOE has attorneys on staff who are called 'administrative law judges'. They travel around the state to hear cases where only the taxpayer's representative and/or taxpayer and the county assessor need to be present. There is no limit on the amount of value that can be appealed or presented and discussed in the SBOE hearing with the administrative law judge. It's always been my opinion that limiting the value appealed to $2 million in the Small Claims Division is prejudicial to the taxapayer along with being more time consuming and costly if the taxpayer must appeal directly the the Regular Division just because their value exceeds $ 2 million. It does not make sense.

THE SETTLING AND/OR STIPULATION OF PROPERTY TAX VALUATION APPEALS/PROTESTS BETWEEN THE TAXPAYER, THEIR AGENT AND A COUNTY APPRAISER :

I must also emphasize that myself and my other fellow property tax consultants are fortunate to be problem solvers and solution providers to many many property taxpayers each year. We sincerely enjoy the hard work, the process and our ability to help increase a taxpayer's bottom line profit. I personally enjoy just meeting and getting to know so many good smart people in Kansas who are hard-working home-grown entrepreneurs, etc. The fact is that the taxpayers and/or clients we serve place their full faith and trust in our ability to handle their property tax matters from A to Z on an annual basis. They are in the business of focusing on growing their business day to day and they do not have time to be interrupted with going to property tax appeal hearings, taking phone calls to discuss property tax details, meeting property tax appeal deadlines, etc., etc. That is OUR job as property tax consultants, advisors, agents, etc. I prefer to keep my clients apprised of the status of their tax appeals, etc. but many of them just want to hear about the final results.

We are in a unique position as property tax consultants as we are continually reviewing hundreds if not thousands of property values each year whether in the form of sales prices, county values, rental and expense data, vacancy data, etc. The taxpayer/client does not have time to get sunk in the confusing quagmire of such data. Even after having all the data, the taxpayer would not know what to do with it. Again, that is OUR job as their property tax consultant. Again, they place their full faith and trust in us to fairly represent their interests and be their advocate, defender, etc. in the complex property tax valuation and appeal process. Most of the work we conduct is detailed appraisal and valuation research and administrative in nature but it is NOT legal in nature. We are not pretending to be "attorneys". In fact, most attorneys I know are not appraisers nor do they have anything close to the experience or knowledge that us consultants have in the property tax field.

Therefore, when us consultants eventually arrive at a value that is acceptable to both a taxpayer/property owner and a county appraiser in the form of a 'stipulation', there should not be any interference by any other taxing authority. The stipulated value should be final. That's only fair.

THE TAXPAYER'S RIGHT TO CHOOSE THEIR OWN REPRESENTATION AND FEE ARRANGEMENT:

The problematic business of a taxing authority attempting to dismiss or throw out a valuation appeal, tax protest or tax grievance based on who signed such a form is nothing but a bush-league immature tactic and unfair and unethical treatment of a taxpayer. HB 2614 will change eliminate that bad behavior by any local or state taxing authority.

The business of any taxing authority filing complaints and/or interfering with the contractual fee arrangements between a taxpayer representative and their client and/or a property taxpayer is nothing less than a restraint of free trade by such a taxing authority. The fee arrangement is irrelevant as to how consultants serve their clients and ultimately it's irrelevant to the final value requested and/or obtained in the appeal process. Even those consultants and companies who represent clients in the areas of sales and use tax at the state level or COTA have no restrictions as to their contractual arrangements with their clients.

Any attempt to interfere with a taxpayer's right to choose who they want to represent them in the property tax appeal process has only hurt that taxpayer and their business. The implementation of HB 2614 will eliminate that additional bad behavior by any Kansas taxing authority and only help taxpayers.

From the beginning of my career, I've always taken an opposing hard line against any bullying by any taxing authority whether it be at the local, state or federal levels. That is why I represent taxpayers who cannot help themselves. I've seen far too many honest hardworking business owners, commercial property owners and even residential property owners occasionally be bullied, manipulated and stonewalled by those in local and state government. Most folks I meet in local and state government are fine ethical hardworking people and I enjoy meeting with them as well. The business of conducting mass appraisal by county appraisers is hard taxing detailed work and not every taxpayer will be pleased no matter what value is placed on their property. In fact, a high percentage of the time, I have to be a counselor and repeatedly to certain "heartbroken" taxpayers that their values are 'fair and equitable' and there is no basis for a property tax appeal .

In summary, if the State of Kansas wants to help property taxpayers and retain businesses, attract more business and increase the number of property taxpayers coming in from out of state then the approval of HB 2614 will be a huge step in the right direction.

Thank you again for your time today. I'm available to answer questions, etc..

Regards,

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Testimony

Hello, and good afternoon, Ladies and Gentlemen of the Committee. Thank you for having me here today to speak to you about House Bill 2614. My name is Lori McMillan, and I am a Professor of Law at Washburn University School of Law, here in Topeka, and I specialize in taxation law. In addition to earning a Master's in Law degree in taxation from NYU, among others, I practiced law for many years in large firms – not just law firms, but also as counsel to a major accounting firm. I hope to be of assistance to you in your consideration of this bill.

As all of you know, the definition of a tax is "**an involuntary payment made to government under threat of compulsion.**" While I am not here today to lecture you on tax law, I think we would all agree that this has ramifications when dealing with people's property rights, and our right to freedom from excessive government intrusion in our lives. Government has resources far greater than its citizens. Because of these resources, and the power that government possesses, there are often multiple avenues of appeal to protect citizens when dealing with government – otherwise, it would be very easy for a government to force its citizens into submission regardless of who was right on any given matter.

The two areas where we most need to worry about this are criminal law – because the state can deprive us of our liberty, a fundamental right – and tax law – because the state can deprive us of our property, also a fundamental right. This is why what we are discussing today is so important, as a fair tax appeals process is a necessary part of any good tax system.

We all value the property that we have worked hard to acquire, and if government is going to take our property from us, in the form of a tax or otherwise, it needs to be done through due process – a FAIR

process. This is a fundamental American value. I come from a farming family, and I know that, at least where I come from, people work too hard to just hand over their wallets to government and say "take whatever you want, I don't need it." That's why the process that a taxpayer is able to use in order to dispute a tax levied by government is extremely important. While Kansas has positioned itself as a 'low-tax-to-no-tax" jurisdiction, this is meaningless without an effective tax appeal system in place to ensure the taxpayer-friendly law is actually followed and interpreted correctly.

When I looked into the Kansas system to examine this matter, I was surprised to discover that despite the 'tax-friendly' label this state has actively pursued, the system here is **far less** tax-payer friendly than what is available at the federal level – and I would not have anticipated that result. I repeat – the federal tax system is far more "taxpayer friendly" than that of the state of Kansas, which should give us all pause.

As the law stands now, once a taxpayer in Kansas has dealt with the Kansas Department of Revenue and has been issued a final assessment of the tax the Department of Revenue believes is owing, the taxpayer must appeal to the Kansas Court of Tax Appeals, an administrative body that by statute consists of a lawyer, an accountant, and one other. Once the tribunal makes a decision, the only recourse a taxpayer has on an income tax matter is to appeal to the Kansas Court of Appeals. This is fairly remarkable for several reasons, the most notable of which are:

1. the tribunal is not a true court, and has at least 1 accountant on it, plus it does not have the expertise to deal with income or excise taxes;
2. the Court of Appeals only checks to see if appropriate procedure was followed, rather than if the right decision was made by the tribunal – so no true court examines the merits of the case;

3. There is a 125% bond required to get in front of the Court of Appeals, and most taxpayers can't even contemplate being able to post such a bond to have their only day in court. Worse yet, the practical reality is that this is an opportunity accorded to only a privileged few wealthy taxpayers.; and
4. having different appeals processes for different taxes is confusing to taxpayers, and makes little sense.

Now, to expand on these reasons:

Not A Court, or Competent

The administrative tribunal is not made up of real judges, and the process is far more informal than a regular court. As I already mentioned, the board must have at least one accountant on it. Accountants are very different than lawyers – they focus on different things, and examine things from a different angle. Just because an accountant knows tax from an **accounting** perspective does not mean he knows law from a tax perspective – when I worked at Arthur Andersen it became very apparent to me that there is a not-so fine line between what accountants do, and what lawyers do, and it is a real concern that accountants might be doing the unauthorized practice of law. Accountants are a valuable part of a tax team, but having an accountant make binding determinations of law and fact strikes me as a bad thing because they can't have had the training necessary in the law matters essential to a court such as the rules of evidence, for example, to enable them to be fair judges. There is no requirement for the tribunal members to have education in income taxation – only in property valuation. Since this board is the first level tribunal (and possibly the only level) that hears income taxation matters, it is problematic that there is no requirement on these people to know or learn about these very complex areas of law, the way they are required to learn about different property valuation methods. Income taxation, for

example, is a very complex area of law, and is not something you can just pick up on the fly. I understand that 99% of what the tribunal hears is property tax issues – which means their experience in dealing with income and excise tax issues is limited at best, and is certainly not made up for in education. This is therefore NOT the last body that should be determining facts that bind a taxpayer and limits their appeals.

Tribunal Opinion Binding- Appeal is Limited

The opinion of the tribunal is essentially binding for purposes of fact-finding **and** interpretation. One may only appeal to the Kansas Court of Appeals mainly on procedural grounds. The effect is that the merits of the case are never heard by a court of competent jurisdiction – the tribunal, for the most part, determines the taxpayer's fate. The tribunal gets to determine what the facts are, and apply them to the law as it sees it - and the Kansas Court of Appeals can only accept an appeal in very limited cases, most commonly when it comes to procedural matters, and it can only consider th facts as presented by the tribunal. Usually, a decision of an administrative tribunal may be appealed to district court, and the person appealing the decision gets a whole new trial, a fresh slate if you will, unencumbered by the findings of the tribunal. This is called a 'trial ***de novo***', or translated, "an entirely new trial." Appellate courts, like the Kansas Court of Appeals, do not make findings of fact, they just look, essentially, to see if any massive errors were made in procedure – even if they would disagree with the outcome, or would have decided things differently, that is not sufficient for the Court of Appeals to overturn a tribunal finding. They are essentially hamstrung. Thus, the appeals structure the way it is – meaning decisions from the tribunal can only be appealed to the Court of Appeals - ensures that the tribunal determination, for the most part, prevents a real court from hearing the taxpayer's case. This is contrary to the fundamental rights that all Americans should have when dealing with their government.

I can make the following analogy of this situation for you: if you are accused of drinking and driving, and are charged with a DUI, if you had the same rights as a taxpayer has to appeal his income taxes in Kansas, the tribunal hearing your DUI charge would be composed of a policeman, a high school civics teacher, and a security guard. The Court of Appeals would be able to step in only if the tribunal didn't follow the appropriate procedure, so no other court can examine the substance of the decision, or set aside the findings of fact made by the tribunal. Even if this tribunal followed proper procedure, and is composed of nice people, I would bet that you all would be uncomfortable with this tribunal having the power to convict you with no power to appeal the substance of the conviction to a real court. That same discomfort should be felt with the current tax appeals system in Kansas.

The Court of Appeals – 125% Bond Required

A taxpayer has a constitutional right to challenge the government's power to take his property. This right, however, in income tax cases in Kansas has been limited severely, and what little does exist can only be exercised by the wealthy, which is unfair to other taxpayers that the system is supposed to serve. Even if the taxpayer's case manages to qualify for one of the few cases where a technical or procedural error might have been made by the tribunal, such that they can appeal to the Kansas Court of Appeals, a bond of 125% of the assessed amount is required to exercise the taxpayer's very limited right of appeal to the Court of Appeals. This ensures that most taxpayers cannot enforce their rights in the face of the government's power. Normal taxpayers – farmers, small business owners, basically everyone who does not have access to a large pot of liquid assets that they do not need while the appeal takes its time going through the process-- are precluded from exercising this very limited right. The tax appeals system should not be so biased against normal, ordinary "Joe the Plumber" taxpayers. While this might be all well and good for doctors and lawyers, I am confident that normal taxpayers such

as my father, who was a beef and cash-crop farmer, or other small business owners, would be unable to come up with the liquid assets equal to 125% of the tax assessed in order to have their limited day in court. Most regular taxpayers don't have that kind of money lying around, let alone the 9% interest set by Kansas statute – contrasted, by the way, to the federal interest rate of around 2%. This is a barrier to entry for tax fairness that doesn't need to exist, and surely prevents taxpayers from pursuing their rights.

The Federal Process

The federal process makes more sense from a taxpayer perspective. Once the taxpayer has exhausted the administrative procedures available to him, the taxpayer gets to choose the forum for his hearing: District Court, Tax court, or U.S. Court of Federal Claims. If the taxpayer chooses to proceed to Tax court, a specialized body of professionals who are well-versed in various types of taxation law (not just property law) absolutely no bond or payment of taxes disputed is required. In addition, at Tax Court, the taxpayer gets their trial ***de novo***, so the court looks at the matter from the beginning, not just to see if procedure was followed. This means that all taxpayers will be able to have their day in court, and have their side heard by an appropriately appointed and constituted court, that is qualified to rule on matters of evidence, law and fact.

Shouldn't Treat Taxes Differently

A tax is a tax – taxpayers don't care if a tax is a property tax, income tax, or excise tax. The average person does not understand the difference, or why they should be treated any differently when it comes time to appeal them. They are all involuntary payments made to government under the threat of compulsion. Currently, only property tax disputes have access to a trial ***de novo*** in district court, after the taxpayer is done with the administrative tribunals. Income and excise tax disputes do not. There is

no rational reason for this difference in access – a taxpayer owing tax is still a taxpayer owing tax, regardless of the type of tax. One might even argue that here in Kansas there is more need for income tax issues to have an appeals process to district court than the property tax issues, since the administrative tribunal is heavily trained to be competent in property tax issues, while the same cannot be said for income tax issues.

Effective Date

Finally, the effective date of any legislation can and does vary, but for taxpayers, I just want to remind the committee, they only really care about the calendar year because that is their tax year. Tax year ends are already an artificial device used to calculate taxes owing – adding another arbitrary date to who may take advantage of changes to this system only makes it look that much more unfair. If you agree that this state's system of tax appeals needs to be made more taxpayer-friendly and fair, it should be made available to **all** taxpayers who have matters in the system, or who have matters still on the table as an appealable case. Anything else just looks like winners and losers are being chosen in an arbitrary fashion, which leaves the impression of government using its strength to arbitrarily beat down the taxpayers. It just looks bad, and is contrary to the reputation that Kansas is trying to build as a taxpayer-friendly jurisdiction.

Conclusion

Making the system more fair by allowing appropriate access to all taxpayers, not just property tax payers, to have their day in court does not create an undue burden on state coffers by reducing revenue, nor does it affect the amount of tax actually owing by any individual taxpayer. Rather it ensures that all taxpayers, who together fund this state, have access to appeal administrative decisions, to make sure the tax system is actually fair. If this state is to be a leader in state taxation, real reform of the appeals process is needed. A "low-tax-to-no-tax" jurisdiction still needs a fair and accessible appeals

process – and it might be argued that such a jurisdiction needs it more than any other to give teeth to their tax policy. A fair appeals process ensures that government cannot over-reach and appropriate property in the name of taxation, while hiding behind procedural rules to prevent the taxpayer from airing his grievance in a true court of law. By allowing a taxpayer to appeal to district court with a trial ***de novo*** from the Kansas Court of Tax Appeals, referencing back to my beginning four points, you achieve the following:

1. It doesn't matter that the tribunal is not a true court, because taxpayers would be able to appeal decisions from it to "have their day in court," and ensure fairness by doing so;
2. the Court of Appeals would still only be able to hear appeals based on procedural issues, but that would be fine because the merits of the case would have been heard in a true court;
3. the fact that there is bond to get into the Court of Appeals would be less bothersome, because the taxpayer would already have had the merits of his case heard in a true court, and would have been adjudged owing that tax after a full consideration of the facts of his case; and
4. the same appeals processes for different taxes would simplify life for taxpayers, and make the tax system much more taxpayer-friendly and fair.

Thank you for your time. I would be pleased to answer any questions you may have.

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TO: Representative Richard Carlson, Chair
House Standing Committee on Taxation

FROM: Scott Slabotsky, CPA

SUBJECT: HB 2614

DATE: February 19, 2014

Mister Chair, Members of the Committee: My name is Scott Slabotsky, and I am a Lead Managing Director in CBIZ's Taxation Division. CBIZ is the seventh largest national accounting firm with over 2,500 accounting professionals working in various offices from Los Angeles to New York City, but with strong local ties. I am a licensed CPA in both the States of Missouri and Kansas and have worked out of our Leawood, Kansas office for over three decades. I have assisted countless taxpayers with their tax matters involving both the federal and state governments, predominately in the States of Kansas and Missouri. I appreciate the opportunity to review and comment on HB 2614.

First, this Bill is not about whether a taxpayer should be assessed any particular tax. HB 2614 is solely about improving the procedural rights of a Kansas taxpayer to appeal assessments made by the state of Kansas. It needs to be emphasized that the Bill is revenue neutral to both the State of Kansas and its taxpayers.

Second, under current law, the Kansas Court of Tax Appeals (COTA) is essentially being treated as a court of law. Upon the issuance of a final order by COTA, the taxpayer may appeal the case to the Court of Appeals in accordance with the Kansas Judicial Review Act, which limits the Court of Appeal's scope of review. In turn, the Court of Appeals may not substitute its

own judgment for that of COTA and is restricted to considering, for example, whether COTA's order was supported by substantial evidence or whether COTA acted fraudulently, arbitrarily or capriciously. COTA is not acting as an administrative tribunal in the executive branch of the government. COTA is acting as a finder of fact and interpreter of laws with final authority in most instances, which is the traditional realm of the judiciary.

Furthermore, the required composition and qualifications of the COTA members provide that only one of the three members must have been a practicing attorney for a period of at least five years. One of the members must have been engaged in active practice as a certified public accountant for a period of at least five years. The third member could seemingly be anyone else the Governor otherwise deems qualified. As a certified public accountant for 38 years, I can state with certainty that certified public accountants should not be rendering final orders and interpreting laws of the state of Kansas. HB 2614 should be enacted in a way to provide Kansas taxpayers with access to an actual court of law composed of qualified members of the judiciary who will determine the fate of Kansas taxpayers through a de novo review.

Third, in order to have the Court of Appeals review the final COTA order, the taxpayer must pay a bond equal to 125% of the amount of taxes assessed, regardless of the type of tax that is in dispute. This means that any individual Kansas taxpayer who faces a proposed income tax assessment by the Department of Revenue is required to post a bond equal to 125% of the proposed personal income tax deficiency in order to have the matter reviewed by an actual court of law. This cost of pursuing an appeal of a COTA order effectively prohibits many of the citizens of Kansas from taking advantage of their basic right to challenge a proposed tax increase by an actual court of law. HB 2614 should incorporate a mechanism for Kansas taxpayers to pursue an appeal to an actual court of law without being required to deposit such a

"punitive" bond before such review, thereby enabling all Kansas taxpayers to have their day in court.

As a comparison, Kansas citizens have much easier access to an actual court of law following any administrative challenges to a federal tax assessment by the IRS than by the Kansas Department of Revenue. With regard to an assessment by the Internal Revenue Service, Kansas citizens have a right to pursue their federal tax appeal in the U.S. Tax Court without paying any portion of the proposed assessment. On such appeal, a Kansas citizen can assert any issues that would diminish or eliminate the assessment proposed by the IRS, whether or not previously presented to the IRS in the earlier administrative procedures (i.e. a de novo review). If unsatisfied, the Kansas citizen then has the right to appeal the Tax Court decision to the 10th Circuit Court of Appeals. This system provides Kansas citizens with far greater rights of review under federal tax law than those currently allowed under Kansas tax law.

HB 2614 has the ability to provide a much fairer means for Kansas taxpayers to challenge and appeal tax assessments made by the state of Kansas. We support any legislation that gives taxpayers greater rights to appeal taxation and ensure that the tax laws are applied fairly to all Kansas taxpayers.

Accordingly, I respectfully request that the Committee act favorably on HB 2614. Again, thank you for providing me the opportunity to speak to you today, and if you have any questions, please feel free to contact me.

Respectfully submitted,

Scott Slabotsky, CPA

Approved: March 05, 2014

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairperson Richard Carlson at 3:34 p.m. on Thursday, February 20, 2014, 582-N of the Capitol.

All members were present

Committee staff present:
Phyllis Fast, Committee Assistant
Chuck Reimer, Office of Revisor
Chris Courtwright, Legislative Research
Scott Wells, Office of Revisor
Edward Penner, Legislative Research
Conferees appearing before the Committee:
No conferees present
Others in attendance:
See Attached List

Chairman Carlson welcomed Representative Les Mason to the Committee.

Chairman Carlson continued the hearing on:

HB2614 Property valuation and appeals; providing for a biennial valuation of real property; renaming the state court of tax appeals; salary and removal of members; powers and duties of the board.

Luke Bell presented testimony in support of **HB2614** by summarizing the increased property tax burden imposed on Kansans the past 16 years. He described how the bill affects other statutes. He stood for questions. (Attachment 1)

Written testimony presented in support of HB2614 was provided by Jeff Boerger, Kansas Speedway (Attachment 2) ; and Tim McKee, Olathe Chamber of Commerce. (Attachment 3)

Written testimony presented as neutral to **HB2614** was provided by Bill Waters, Kansas Department of Revenue (Attachment 4) ; and David Harper, Kansas Department of Revenue. (Attachment 5)

Chief Judge Sheldon presented testimony in opposition to **HB2614** by presenting information in defense of the current court of tax appeals. He stood for questions. (Attachment 6)

Nathan Eberline presented testimony in opposition to **HB2614** by emphasizing a more equitable system. He stood for questions. (Attachment 7)

Rich Eckert presented testimony in opposition to **HB2614** by explaining why he supports the current

court of tax appeals procedures. He stood for questions. (Attachment 8)

Paul Welcome presented testimony in opposition to **HB2614** by expressing his concern to use a biennial appraisal. He stood for questions. (Attachment 9).

Greg McHenry presented testimony in opposition to **HB2614** by expressing his concern to raise the small claims limit. He stood for questions. (Attachment 10)

Written testimony presented in opposition to **HB2614** was provided by Gene Bryan, Wyandotte County Appraiser. (Attachment 11)

After all questions from the Committee were answered, Chairman Carlson closed the hearing on **HB2614.**

The next meeting of the Committee is scheduled for 3:30 pm Monday, February 24, 2014 in 582-N of the Capitol.

The meeting was adjourned at 5:15 pm.

HOUSE TAXATION COMMITTEE

Date: February 20, 2014 HB2614 - OPPONENTS

Name	Representing
Nathan Eberline	KAC
Kaitlie Campbell	Bright & Carpenter
Kent Eckles	KS Chamber
Michael Gillespie	ONEOK
Bill Sneed	Polsinelli
Eric Stafford	KS Chamber

KANSAS ASSOCIATION OF REALTORS®

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To: House Taxation Committee

Date: February 19, 2014

Subject: **HB 2614** – Supporting Reform of the Property Tax Appeals Process and Increasing the Consistency and Predictability of Property Taxes for Kansas Property Owners

Chairman Carlson and members of the House Taxation Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in support of **HB 2614**, which is a common sense and reasonable proposal to reform the Kansas Court of Tax Appeals (COTA) and to increase the consistency, fairness and predictability of the property tax appeals process for Kansas property owners. Through our comments, we hope to provide some additional context to the discussion on this very important issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners for over 90 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Does Kansas have a property tax problem?

Over the last 16 years, the property tax burden imposed on Kansas families, farmers and small businesses by local governments has increased exponentially. From 1997 to 2013, the total amount of property tax revenues collected by Kansas counties increased from $547.6 million in 1997 to $1.2 billion in 2013, which is a total increase of 116.9% over this time period. On average, Kansas counties have increased the property tax burden by 7.3% each year.

Similarly, the total amount of property tax revenues collected by first class cities increased from $226.8 million in 1997 to $447.6 million in 2013, which is a total increase of 97.4% over this time period. On average, Kansas first class cities have increased the property tax burden by 6.1% each year. No reasonable individual could look at this data and conclude that the property tax burden was not skyrocketing on Kansas families, farmers and small businesses.

At the same time, inflation increased by an average of 2.4% and the Kansas statewide population grew by just 0.6% each year over the same time period. As a result, the property tax burden is currently growing at a rate that is nearly double the rate of inflation plus population growth. Your constituents cannot continue to shoulder a property tax burden that vastly outweighs the growth of the Kansas economy, wages, inflation and the statewide population.

If the Kansas Legislature does nothing to address this growing problem, then the total property tax burden on Kansas families, farmers and small businesses will most likely double again over the next decade. Can your constituents withstand another 100% to 120% increase in their property tax burden over the next decade?

Unfortunately, REALTORS® believe that this dramatic growth in the property tax burden stifles the economic prosperity of many Kansas farmers, self-employed professionals and small businesses that have seen a consistent and drastic increase in the amount of their income that is devoted to paying their property tax assessments. Regardless of whether the underlying business made a profit or not in a given year, every farmer or small business owner is required to pay an ever-increasing amount of property taxes each year to subsidize local government spending.

The ever-increasing property tax burden increases business input costs just like any other tax and decreases the amount of capital that can be poured back into the business by hiring new employees or investing in new business capacity. If Kansas wishes to continue on the path of becoming a low tax burden state for families, farmers and small businesses, then something must be done to address our exponentially increasing property tax burden.

According to a detailed analysis by the Tax Foundation, Kansas currently has one of the most burdensome property tax systems for businesses with a ranking of 41st in 2012. In addition, the Tax Foundation recently ranked Kansas as 47th overall in terms of the most favorable tax climate for mature business operations and 48th overall for newly-established business operations. In doing so, the report stated that Kansas has one of the highest (if not the highest) property tax burdens on business operations across nearly all 14 categories of business operations.

Furthermore, we believe that this increasing property tax burden makes it more difficult for Kansas families to make ends meet and is severely burdensome for many senior citizens and low-income Kansans living on fixed incomes. Over the last few years, we have heard many anecdotal stories of Kansans literally being forced out of their homes due to their inability to keep up with the drastic increases in their property tax burdens.

How would **HB 2614** help address our property tax problem?

Unfortunately, this increase in the property tax burden on Kansas property owners is compounded by several existing conditions in the property tax appeals process that create an uneven playing field and unfair treatment for property owners. These conditions make it significantly more difficult for property owners to successfully navigate the property tax appeals process and provide strong disincentives for county appraisers to deal fairly with property owners during the property tax appeals process.

As currently drafted, REALTORS® believe that **HB 2614** is simply a good faith effort to make some incremental improvements to the property tax appeals process to level the playing field between property owners and local governments. Accordingly, we fully support all of the provisions in **HB 2614** and believe that they will provide property owners with a greater level of consistency, fairness and predictability in the property tax appeals process.

Most importantly, we agree with the rest of the proponents that major reforms are needed to ensure that the Kansas Court of Tax Appeals (COTA) resolves property tax appeals from Kansas property owners in a fair and timely fashion. Over the last few years, REALTORS® have heard from many clients and customers that COTA has made it very difficult for property owners to receive fair and timely resolutions to their property tax appeals.

In addition to the many other positive changes contained in **HB 2614**, REALTORS® are extremely supportive of the proposals to change the Court of Tax Appeals (COTA) back into the Board of Tax Appeals (BOTA), require BOTA to refund the filing fees to both parties if a decision is not rendered within 120 days following a hearing and to prohibit BOTA from restricting who can provide advice and representation to property owners during BOTA proceedings. All of these reforms are extremely necessary and will help increase the consistency, fairness and predictability of the property tax appeals process for Kansas property owners.

How can you improve **HB 2614** to provide even more consistency, fairness and predictability for taxpayers?

Having said that, REALTORS® do believe that there is one modification that can be made to **HB 2614** to make further reforms to the property tax appeals process and provide more consistency, fairness and predictability for Kansas property owners. In doing so, REALTORS® would respectfully request that the House Taxation Committee amend the provisions of Section 3 of **HB 2134** into **HB 2614**, which is a friendly amendment to the underlying intent of **HB 2614**.

During the 2013 Legislative Session, the House Taxation Committee overwhelmingly approved legislation (**HB 2134**) that also sought to make some common sense and reasonable reforms to the property tax appeals process. This bill is currently sitting on General Orders and has yet to be worked on the House floor during this session. However, many of the provisions in **HB 2134** are very similar to the provisions in **HB 2614** and deal with the same general subject matter, which means that it would most likely be impractical for the Kansas Legislature to work both bills.

Accordingly, we would propose that the House Taxation Committee amend the contents of Section 3 of **HB 2134** into **HB 2614**, which is a friendly amendment to the bill and would cause no harm to the underlying intent of **HB 2614**. In fact, the intent behind Section 3 of **HB 2134** is exactly the same as **HB 2614**, which is to increase the consistency, fairness and predictability of the property tax appeals process for Kansas property owners.

The new language in Section 3(a) on pages four and five of **HB 2134** would prohibit a county appraiser from increasing the valuation of a property for three years after the property has been reduced by a final determination made in the property tax valuation appeals process, unless the county appraiser determines that there are "substantial and compelling reasons" for increasing the valuation of the property. Current law dictates that the county appraiser cannot increase the valuation of the property for the one year immediately following the successful appeal, but the existing language in this statute does not provide any definition of what constitutes a "substantial and compelling reason" behind the increased valuation.

In practice, current law basically allows the county appraiser to completely circumvent the intent behind the statute and increase the valuation of the property in the year immediately following a successful property tax appeal. Unfortunately, any property owner who has undergone the full property tax appeals process to the Kansas Court of Tax Appeals will tell you that this is a very difficult, expensive and time-consuming process. If the county appraiser increases the valuation of the property in the year immediately following the resolution of the appeal, then the property owner has gained nothing with the appeal and must repeat the entire burdensome process all over again.

When the property owner finally reaches the end of this arduous process (following thousands of dollars of consultants' and attorneys' fees and months or years of waiting) and is granted a decreased valuation of the property, good public policy would dictate that the successful conclusion of this process would provide the property owner with a certain amount of consistency and predictability in their property tax valuation for the next few years. Especially for commercial properties, many property owners rely on this consistent and predictable property valuation to obtain financing and manage their financial investment in the property.

However, in many cases we have received anecdotal reports from property owners that the county appraiser has simply increased the proposed valuation of the subject property back to the originally proposed amount that was the subject of the appeal in the next taxable year following the successful appeal. The practical effect of this practice is to completely negate the property owner's efforts in prosecuting the successful appeal and to again force them to consider spending considerable financial resources and time on another appeal to the Kansas Court of Tax Appeals.

Although we have no evidence as to how widespread this practice has become in recent years, REALTORS® would contend that it is completely unfair and an example of very poor public policy to require a property owner to undergo a subsequent valuation appeal on the subject property when they have just spent a considerable amount of financial resources and time in obtaining the relief on the first successful appeal. In our opinion, there must be a better system in place to provide property owners with consistency following an appeal.

As proposed in Section 3(a) on pages four and five of **HB 2134**, the new language would simply guarantee that the property owner would be able to enjoy the relief provided by the first successful appeal for an uninterrupted period of three taxable years following the appeal. Unless the county appraiser was able to detail a "substantial and compelling reason" for increasing the valuation within this time period, the property owner would have consistency and predictability in the valuation of the subject property.

In addition, the new language in Section 3(c) on page six of **HB 2134** would define the term "substantial and compelling reasons" to mean a change in the character of the use of the property or a substantial addition or improvement to the property. As discussed above, current law does not define the term "substantial and compelling reasons" and therefore places no limits on the justification that can be used by a county appraiser to increase the valuation of the property following a successful appeal. In effect, there are no checks and balances under current law on the ability of the county appraiser to allege that there has been a "substantial and compelling reason" to increase the valuation of the property.

Under the current system, there is no objective definition of the term "substantial and compelling reasons" in any Kansas statutes, regulations or case law. Accordingly, the county appraiser has no criteria whatsoever to guide him or her on a claim that the valuation of the subject property should be increased due to a "substantial and compelling reason." In our opinion, the statute is so vague and indefinite that a reasonable property owner is given no guidance whatsoever on which circumstances might trigger a revaluation of the subject property under the existing statute.

As proposed in Section 3(c) on page six of **HB 2134**, the new language will simply provide some objective criteria that the county appraiser will be required to follow when determining whether the valuation of the subject property can be increased following a successful appeal. The proposed definition of "substantial and compelling reasons" in **HB 2134** is completely reasonable and is consistent with the relevant case law concerning the grandfathering of properties with existing, non-conforming uses in zoning law.

Under the proposed language, unless the property owner changes the character of the use (which could have a significant impact on the value of the property) or expands or enlarges the physical footprint of the subject property (which again could and should have a significant impact on the value of the property), the property owner would be provided with consistency and predictability in the valuation of the subject property. Absent these changes to the subject property, we believe that it would be very difficult for the county appraiser to argue that any other reasons are sufficiently "substantial and compelling" to justify an upward departure from the valuation of the property established in a recent successful appeal by the Kansas Court of Tax Appeals.

Again, REALTORS® believe that these are friendly amendments to **HB 2614** and that the amendments would cause no harm to the underlying intent behind the bill, which is to increase the consistency, fairness and predictability of the property tax appeals process for Kansas property owners. Since many of the provisions in **HB 2134** are very similar to the provisions in **HB 2614** and deal with the same general subject matter, we believe it would be impractical for the Kansas Legislature to independently work both bills and therefore we would like to merge some of these provisions.

Accordingly, we would propose that the House Taxation Committee amend the contents of Section 3 of **HB 2134** into **HB 2614**, which is a friendly amendment to the bill and would cause no harm to the underlying intent of **HB 2614**. If the House Taxation Committee chooses to approve this amendment, we think that the amendment will strengthen the reforms contained in **HB 2614** and ensure that this important provision in **HB 2134** continues to move forward.

Conclusion

In closing, we would respectfully request that the members of the House Taxation Committee to support **HB 2614**, which is a common sense and reasonable proposal to reform the Kansas Court of Tax Appeals (COTA) and the property tax appeals process to level the playing field for Kansas property owners. Thank you for the opportunity to provide comments on this very important issue for Kansas property owners and the Kansas economy.

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2134

By Committee on Taxation

1-30

AN ACT concerning property taxation; relating to classification or valuation of property; appeals; protesting payment; amending K.S.A. 2012 Supp. 74-2433f, 79-1448, 79-1460 and 79-2005 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2012 Supp. 74-2433f is hereby amended to read as follows: 74-2433f. (a) There shall be a division of the state court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental~~ *amendments* thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed $15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than $2,000,000 as reflected on the valuation notice; (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental~~ *amendments*

~~*the taxpayer's property is reduced pursuant to a final determination made pursuant to the valuation appeals process, the county shall be required to pay reasonable attorney fees and costs to the prevailing taxpayer.*~~ The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May 15, nor shall a final determination be given by the appraiser after May 20. Any final determination shall be accompanied by a written explanation of the reasoning upon which such determination is based when such determination is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, and such hearing officer, or panel, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, any taxpayer aggrieved by the final determination of the county appraiser, except with regard to land devoted to agricultural use, wherein*:* *(1)* The value of the property, is less than $2,000,000, as reflected on the valuation notice~~,~~*; (2) the valuation of the property has been increased by the county appraiser in a taxable year immediately following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process;* or *(3)* the property constitutes single family residential property, may appeal to the small claims and expedited hearings division of the state court of tax appeals within the time period prescribed by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the state court of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall be a condition precedent to an appeal to the county or district hearing panel.

Sec. 3. K.S.A. 2012 Supp. 79-1460 is hereby amended to read as follows: 79-1460. (a) The county appraiser shall notify each taxpayer in the county annually on or before March 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of the classification and appraised valuation of the taxpayer's property, except that, the valuation for all real property shall not be increased unless: (1) The record of the latest physical inspection was reviewed by the county or district appraiser, and documentation exists to support such increase in

valuation in compliance with the directives and specifications of the director of property valuation, and such record and documentation is available to the affected taxpayer; and (2) for the *next three* taxable ~~year next~~ *years* following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process, documented substantial and compelling reasons exist therefor and are provided by the county appraiser. When the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process for the prior year, and the county appraiser has already certified the appraisal rolls for the current year to the county clerk pursuant to K.S.A. 79-1466, and amendments thereto, the county appraiser may amend the appraisal rolls and certify the changes to the county clerk to implement the provisions of this subsection and reduce the valuation of the real property to the prior year's final determination, except that such changes shall not be made after October 31 of the current year. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk and, in the case where the real property or improvement thereon is the subject of a lease agreement, such term shall also be deemed to include the lessee of such property if the lease agreement has been recorded or filed in the office of the register of deeds. Such notice shall specify separately both the previous and current appraised and assessed values for each property class identified on the parcel. Such notice shall also contain the uniform parcel identification number prescribed by the director of property valuation. Such notice shall also contain a statement of the taxpayer's right to appeal, the procedure to be followed in making such appeal and the availability without charge of the guide devised pursuant to subsection (b). Such notice may, and if the board of county commissioners so require, shall provide the parcel identification number, address and the sale date and amount of any or all sales utilized in the determination of appraised value of residential real property. In any year in which no change in appraised valuation of any real property from its appraised valuation in the next preceding year is determined, an alternative form of notification which has been approved by the director of property valuation may be utilized by a county. Failure to timely mail or receive such notice shall in no way invalidate the classification or appraised valuation as changed. The secretary of revenue shall adopt rules and regulations necessary to implement the provisions of this section.

(b) For all taxable years commencing after December 31, 1999, there shall be provided to each taxpayer, upon request, a guide to the property tax appeals process. The director of the division of property valuation shall

devise and publish such guide, and shall provide sufficient copies thereof to all county appraisers. Such guide shall include but not be limited to: (1) A restatement of the law which pertains to the process and practice of property appraisal methodology, including the contents of K.S.A. 79-503a and 79-1460, and amendments thereto; (2) the procedures of the appeals process, including the order and burden of proof of each party and time frames required by law; and (3) such other information deemed necessary to educate and enable a taxpayer to properly and competently pursue an appraisal appeal.

(c) For the purposes of this section:

(1) The term "substantial and compelling reasons" means a change in the character of the use of the property or a substantial addition or improvement to the property;

(2) the term "substantial addition or improvement to the property" means any expansion or enlargement of the physical occupancy of the property through the construction of any new structures or improvements on the property or any renovations that expand or enlarge the square footage of any existing structures or improvements on the property. The term "substantial addition or improvement to the property" shall not include:

(A) Any maintenance, renovation or repair of any existing structures, equipment or improvements on the property that does not expand or enlarge the square footage of any existing structures or improvements on the property; or

(B) reconstruction or replacement of any existing equipment or components of any existing structures or improvement on the property.

Sec. 4. K.S.A. 2012 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) 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 $^1/_2$ 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. When the grounds of such protest is an assessment of taxes made pursuant to K.S.A. 79-332a and 79-1427a, and amendments thereto, the county treasurer may not distribute the taxes paid under protest until such time as the appeal is final. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county

KANSAS SPEEDWAY
DEVELOPMENT CORPORATION

WRITTEN ONLY

February 13, 2014

Dear Chairman Carlson & Committee Members:

I appreciate the opportunity to submit this written testimony regarding House Bill 2614, an act reforming the Court of Tax Appeals.

In my previous roles with the Kansas City Area Development Council (KCADC), President of Kansas Speedway and now in my role as President of Kansas Speedway Development Corporation (KSDC), I have had the privilege of serving unique roles on both sides of the table for making projects come together throughout the region and Kansas City, KS/Wyandotte County.

We've experienced tremendous growth since the opening of Kansas Speedway in 2001. Kansas Speedway became the anchor for economic development and our plans continue to attract unique, high quality developments that will create jobs and wealth in Kansas City, KS and the State of Kansas.

However, I'm concerned that if the Court of Tax Appeals (COTA) is not reformed that process will detract from our ability to attract and recruit businesses and investment opportunities to our area as well as the rest of Kansas.

The goal is to reform COTA to provide an affordable, accessible and impartial system that can resolve state and local tax disputes expeditiously and efficiently. This will help Kansas with its economic development efforts plus ensure a fair process for the taxpayer.

Many provisions in HB 2614 address my concerns. They are:

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www.kansasspeedway.com

Requiring a decision within the statutory timeframe after the case is fully submitted and, if not, refunding the filing fee to the taxpayer;

Revert back to its original name, Board of Tax Appeals (BOTA);

Clarifying the burden of proof on leased commercial property tax appeals;

Allowing a taxpayer to file for a subsequent year without paying a filing fee if their prior year's appeal is still pending at COTA;

Requiring COTA to have a mutual exchange of expert exhibits;

Clarifying COTA is not to 1) determine public policy, 2) determine what constitutes the unauthorized practice of law, 3) dictate who a taxpayer may contract with and/or the terms of the arrangement or 4) dictate who may sign an appeal form.

Thank you for your attention to my comments and concerns and I ask for your support of HB 2614.

Kansas Speedway Development Corporation Contact Information:

Jeff Boerger
President
Kansas Speedway Development Corporation
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c. 913.526.5897
e. jboerger@kansasspeedway.com

Written Testimony in Favor of HB 2614
Submitted by Tim McKee, President
February 19, 2014

OLATHE
CHAMBER OF COMMERCE
ONE VISION. ONE VOICE.

Chairman Carlson and honorable committee members,

The Olathe Chamber of Commerce is the largest chamber in Johnson County and the second largest chamber in the Kansas City area. Comprised of 1,300 members and growing, it was the first chamber in the state to receive 5-Star Accreditation from the U.S. Chamber of Commerce – a designation obtained by less than 1 percent of the nation's chambers. Its mission is to be the voice of business that advances the economic well-being and quality of life in Olathe.

As President of the Olathe Chamber, I would like to express our member's support for the changes outlined in HB 2614, which proposes to overhaul the current Kansas Court of Tax Appeals (COTA) and return its name to the Board of Tax Appeals (BOTA). Our members concerns include, but are not limited to:

- COTA members acting as judges when they are not legally trained
- Insufficient records created during the proceedings that cannot be corrected when submitted to the Kansas Court of Appeals
- COTA decisions delayed past the designated 120 days designated for decisions to be made, and
- Mass appraisals accepted over taxpayer's individual appraisal from a Certified Appraiser.

Our members support HB 2614 because it redirects COTA back to its original intent--a nonjudicial review of tax appeals. By turning it back into a board, reducing board member salaries, providing for methods to remove the underperforming board members, and establishing penalties for decisions not being rendered in 120 days, the Kansas Legislature will re-establish the intended purpose of the forum--to provide a less formal (and less expensive) review process for Kansas taxpayers to resolve their tax disputes. In addition, the changes proposed will empower taxpayers to have control over whether they appeal to District Court or go directly to the Court of Appeals. These changes will assure an expedited tax review process that resolves disputes in the least costly manner for the taxpayer.

Thank you for the opportunity to submit these written comments on behalf of our members. If you have questions regarding there written comments, please contact me at 913.764.1050.

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Nick Jordan, Secretary
David N. Harper, Director

Sam Brownback, Governor

TO: Rep. Richard Carlson,
Chairman, Committee on Taxation

FROM: Bill Waters, Attorney,
Division of Property Valuation

DATE: February 19, 2014

SUBJECT: HB 2614

Mr. Chairman and members of the committee, my testimony concerns provisions of sections 7 and 10 of HB 2614.

Section 7 provides in part:

> If a taxpayer presents a property-specific appraisal conducted by a certified general appraiser which determines the subject property's valuation to be less than that determined by a mass real estate appraisal conducted by the county or district appraiser, then the taxpayer's property-specific appraisal shall be accepted by the board.

In my opinion, this provision of HB 2614 is an unconstitutional delegation of legislative authority to a non-governmental individual.

Article 2, section 1 of the Kansas Constitution provides: "The legislative power of this state shall be vested in a house of representatives and senate." Legislative authority may in limited cases be delegated to *governmental agencies* where adequate guidelines are prescribed to define the conditions and nature of the authority to be exercised. *See Gumbhir v. Kansas State Board of Pharmacy,* 228 Kan. 579, 583, 618 P.2d 837 (1980). The legislature may not, however, delegate legislative powers to a *nongovernmental individual or group. Id.* at 585. See also *Sedlak v. Dick,* 256 Kan. 779, 887 P.2d 1119 (1995) where the Kansas Supreme Court held that a statute requiring one member of the Workers Compensation Board be appointed by the Kansas Chamber of Commerce and Industry and one member be appointed by the Kansas AFL-CIO was an unconstitutional delegation of legislative authority.

The legislature is required by article 11, § 1 of the Kansas Constitution to provide for a uniform and equal basis of valuation of all property subject to taxation. To comply with this constitutional mandate, the legislature has required that all property be valued at fair market value, except where the constitution requires otherwise, *e.g.,* land devoted to agricultural use

and commercial and industrial machinery and equipment. Fair market value is defined in K.S.A. 79-503a. To carry out this constitutional mandate, the legislature has created the office of county appraiser and set forth the duties and powers of the county appraiser. See K.S.A. 19-425 to 19-436, inclusive. See also 79-504, 79-505, 79-1412a and K.S.A. 79-1456. In addition, the legislature has created the court of tax appeals. See K.S.A. 74-2426 to 74-2447, inclusive. See also K.S.A. 79-213, 79-1409, 79-1413a, 79-1478a, 79-1481 79-1609. It is certainly the prerogative of the legislature to abolish the court of tax appeals and substitute in its place a board of tax appeals. What the legislature cannot do, however, is give its legislative authority to a non-governmental individual. Section 7 of HB 2614 not only gives legislative authority to a non-government individual – a certified general appraiser – it mandates that the board of tax appeals accept such appraisal when its estimate of value that is less than the estimate of value of the county or district appraiser. If enacted, appraisals in this state may be established by non-governmental individuals and the governmental agency created by the legislature to hear appeals and review appraisals is required to accept it. This is an unconstitutional delegation of legislative authority to a non-governmental individual.

Section 10 of HB 2614, provides in part:

> That all appraisals be performed in accordance with generally accepted appraisal standards as evidence by the appraisal standards promulgated by the appraisal standard board of the appraisal foundation ~~which are in effect on March 1, 1992~~.

Striking the effective date of the appraisal standards is an unconstitutional delegation of legislative authority to the appraisal foundation, a non-governmental organization. Although the legislature may adopt appraisal standards that are in effect as of a date certain, it may not require that appraisals be performed in accordance with standards that have been amended after they have been adopted by the legislature. See, *e.g., The State v. Crawford,* 104 Kan. 141, Syl. ¶ 3, 177 Pac. 360 (1919) ("[A] set of rules . . . promulgated by a body of private individuals . . . [is] revised from time to time . . . [and requiring conformity to them] is an attempt to delegate the legislative power of this state, and is therefore unconstitutional.")

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Nick Jordan, Secretary
David N. Harper, Director

Sam Brownback, Governor

TO: Rep. Richard Carlson,
Chairman, Committee on Taxation

FROM: David Harper, Director
Division of Property Valuation

DATE: February 19, 2014

SUBJECT: HB 2614

My testimony concerns provisions of sections 1, 7 and 10 of HB 2614.

Section 1 (page 1, lines 27 – 32), would move the current annual reappraisal cycle of property in Kansas for property tax purposes to a two year appraisal cycle. While it may come to be determined there are benefits in making this move, the Division of Property Valuation (PVD) has concerns HB 2614 understates the complexity and the potential for unintended consequences of such a significant change.

There are a number of unanswered questions which surfaced during our discussion on the implementation of this section. Subsection (b) does provide for a new or increased value for any improvement for which a valuation has not been established as of the first year of a biennium, however it is unclear the date the new value should be added or what would qualify as "any improvement." There are other scenarios which are not addressed, including changes in classification, changes in legal descriptions and the demolition of property, which do not appear to trigger an updated value or classification until the beginning of the following two-year period.

There are numerous statutes and policy in place which require procedures related to the annual appraisal and classification of property. For this potential change to provide maximum benefits, we believe we should explore modifications to all related annual procedures to determine if they could be extended to a two year cycle, with potential cost benefits to the counties, state and taxpayer. I would encourage consideration for further study and a more detailed plan before moving to a two year appraisal cycle.

For informational purposes, I am also including historical data to illustrate the potential fiscal impact. The chart below shows the change in assessed value based on a hypothetical situation where appraisals where based on a biennium, beginning in 2001. Column C reflects assessed values with the change from the prior year limited to assessed value attributed to new construction.

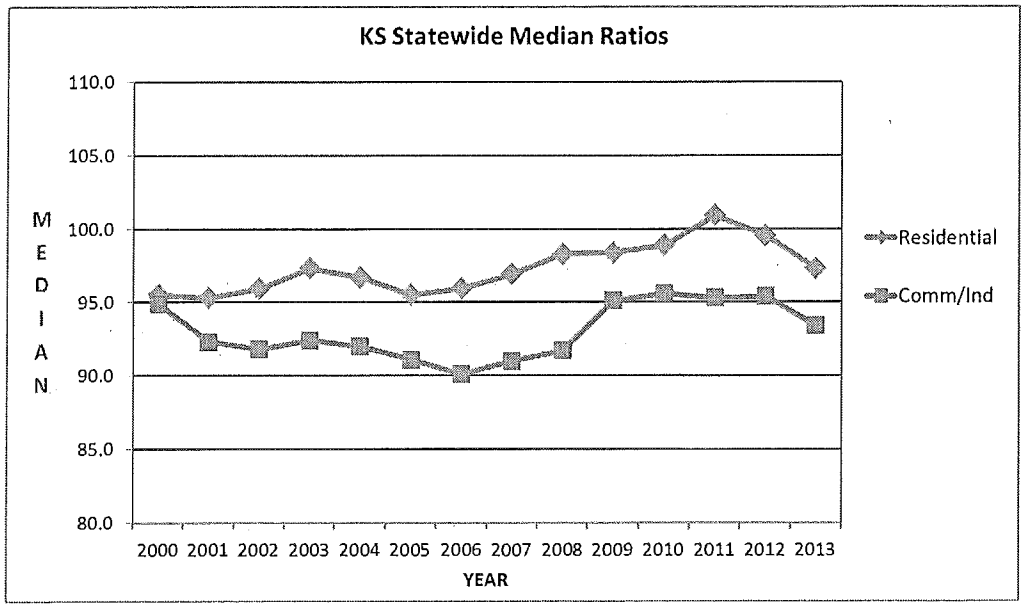
	(A)	(B)	(C)	(D)	(E)
	Total Assessed	Value added from new Construction	Value adjusted for 2nd Year of Biennium	Difference in 2nd Year (Biennium - Actual Assessed Value)	Difference X 20 Mills
2001	22,458,551,515	432,546,317			
2002	23,034,628,287	406,691,382	22,865,242,897	-169,385,390	-3,387,708
2003	23,960,004,861	434,874,619			
2004	25,398,439,083	437,928,812	24,397,933,673	-1,000,505,410	-20,010,108
2005	27,019,361,810	457,291,651			
2006	28,964,281,984	553,469,984	27,572,831,794	-1,391,450,190	-27,829,004
2007	30,086,916,177	605,084,089			
2008	31,000,343,745	498,037,384	30,584,953,561	-415,390,184	-8,307,804
2009	30,312,186,115	468,975,372			
2010	29,450,212,617	340,811,681	30,652,997,796	1,202,785,179	24,055,704
2011	29,963,572,158	310,620,298			
2012	30,382,791,283	309,165,484	30,272,737,642	-110,053,641	-2,201,073
2013	30,850,221,495	318,015,297			

Section 7 (page 10, lines 6 – 10) provides in part, "if a taxpayer presents a property-specific appraisal conducted by a certified general appraiser which determines the subject property's valuation to be less than that determined by a mass real estate appraisal conducted by the county or district appraiser, then the taxpayer's property-specific appraisal shall be accepted by the board."

PVD believes a private appraisal provided by a taxpayer should receive consideration at all levels of appeal. We do have concerns with what appears to be an implication that an opinion of value from a certified appraiser will always trump a county appraisal. Both appraisals should be considered and reviewed by all appeal's boards and courts, with the decision on which provides the best indicator of value based on the merits of each for the specific subject property.

Kansas has established qualification standards and testing measures for Kansas county appraisers which are some of the most demanding in the United States. For an individual to qualify to be appointed as a Kansas county appraiser, they must have three years mass appraisal experience, successfully complete comprehensive exams and case studies developed by PVD, successfully complete 120 hours of continuing education every four years and hold one of the following (1) A certified general real property appraiser, (2) a registered mass appraiser designation or (3) a valid residential evaluation specialist or certified assessment evaluation designation from the International Association of Assessing Officers. Twenty Kansas county appraisers are certified general appraisers.

Kansas county appraisers specialize in developing and utilizing mass appraisal techniques in the valuation of residential and commercial property, classes of property which make up about 73% of the total assessed value in Kansas. The overall values are compared to actual sale prices in the annual sales ratio study conducted by PVD. The following graph depicts ratio results from 2000 through the 2013 preliminary report and indicates overall the total values have been within acceptable standards.



Based on the professional standards required of Kansas county appraisers and the overall reliability of values as documented through the sales ratio study, it does appear the appraisers should have the opportunity to defend their values to an appeals board when in their appraisal judgment it provides a reliable indicator of market value.

Section 10 (page 12, line 19), strikes the reference to an effective date for the appraisal standards.

I agree with the intent of this change. The Uniform Standards of Professional Appraisal Practice (USPAP) is updated every two years. Appraisals should be done in accordance with the current version of USPAP. We plan to move the USPAP requirement to compliance with the current version beginning with January 1, 2015 and will be holding an open hearing this spring to discuss the change. However, as PVD attorney will detail in his testimony, there are concerns the current draft of HB 2614 may be an unconstitutional delegation of legislative authority to the appraisal foundation. PVD would hope replacement language could be drafted to require appraisals be performed in accordance with current standards.

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Sam H. Sheldon, Chief Judge
James D. Cooper, Judge
Ronald C. Mason, Judge

Sam Brownback, Governor

MEMORANDUM

To: Kansas House Taxation Committee
Re: **HB 2614 – OPPOSING Testimony**
Date: Hearings on February 19 & 20, 2014

Starting on page 3 is the written testimony of Chief Judge Sheldon on behalf of the Court of Tax Appeals opposing HB 2614. Below is an executive summary of that testimony:

Executive Summary

- HB 2614 presumes the necessity of changing COTA, and taking it back to its status as a board prior to the 2008 legislation.
- The proponets of HB 2614 seek, through the bill, to de-professionalize COTA, its operations, and its judges.
- Four (4) primary concerns or needs were identified regarding the Board of Tax Appeals and as justifications, in 2007 and 2008, to create the Court of Tax Appeals: (1) timeliness of decisions; (2) judicial efficiency in its operations; (3) the fairness and impartiality of decisions; and (4) the need for well-qualified adjudicators.
- A professionalized court of tax appeals has significantly improved timeliness since 2008.
- A few decades ago our staff reached a high of 50 FTE. In 2001, we were at 36 FTE. By 2012 we were down to 18 FTE. That number included five (5) staff attorneys. Since then, we have been able to reduce our number of staff attorneys to three (3) and still operate efficiently with 16 FTE.
- Having well-qualified judges means that the judges can carry more workload themselves rather than relying on staff attorneys.
- A third concern was the fairness and impartiality of our decisions. Our statistics are consistent with COTA's fair treatment of taxpayers.
- Regarding qualifications, one proponent of COTA back in 2007 identified having qualified judges as "essential." COTA needs as tax judges well-qualified professionals who are capable of analyzing and addressing sophisticated and difficult legal and tax issues.
- HB 2614 would make it much less likely that qualified tax professionals (attorneys and CPAs) would be willing to serve as COTA tax judges. Tax expertise is in high demand and low supply. Reducing salaries will make it that much more difficult in the future to find qualified persons willing to serve.
- HB 2614 would transfer the judge removal process away from the Governor and to the district courts. This could subject judges to endless lawsuits by disgruntled parties. This in turn would make it that much more difficult to find qualified persons willing to serve. COTA would be the only administrative agency/tribunal with this removal mechanism. It would also subject the Governor to the potential for collateral political attacks on his appointments through the courts.

House Taxation
Date: 2/20/14
Attachment: 6

- The proponents of HB 2614 seek, through the bill, not only to de-professionalize COTA, its operations, and its judges; but also to approve and endorse a business model that appears to constitute the unauthorized practice of law ("UPL") under Kansas Supreme Court decisions.
- Pending appellate court cases should resolve the UPL issues, one way or the other, without the necessity of HB 2614. And thus it makes sense to wait for decisions from the appellate courts so that any statutory approach can be crafted with full recognition of appellate court guidelines on UPL.
- HB 2614 adds an optional appeal to the district courts before appealing to the court of appeals. This will cause judicial inefficiency. It creates an extra level of appeal.
- In summary, COTA opposes HB 2614 as a broad attempt to de-professionalize COTA, its operations, and its judges.

LEGISLATIVE TESTIMONY

before the Kansas House Taxation Committee
Hearings on HB 2416 – February 19 & 20, 2014

by
Sam Sheldon
Chief Judge
KANSAS COURT OF TAX APPEALS

Mr. Chairman. Mr. Vice-Chairman. Distinguished members of the Taxation Committee.

I am Sam Sheldon, Chief Judge of the Court of Tax Appeals. It is a privilege to serve the people of Kansas.

We, as a society, are devoted to a marketplace of ideas. Therefore, today I will present ideas. I will also present facts and perhaps a tadbit of law.

I am here today, on behalf of COTA, to oppose HB 2614.

In 2008, the legislature changed the Board of Tax Appeals into the Court of Tax Appeals. The present bill now presumes the necessity of changing COTA, and taking it back to its status as a board. The proponents of HB 2614 seek in effect to de-professionalize COTA, its operations, and its judges.

Prior to the 2008 change, a proponent of that change identified four (4) primary concerns or needs as justifications for creating the court: (1) timeliness of decisions; (2) judicial efficiency in its operations; (3) fairness and impartiality of decisions; and (4) well-qualified adjudicators.

So let's take a look at those four (4) objectives and treat them as a benchmark.

First, a professionalized Court of Tax Appeals has significantly improved timeliness since 2008. During 2012 and 2013, only a small number of our decisions were rendered late. And we have improved timeliness while reducing our staff.

House Taxation
Date: _____
Attachment: _____

6-3

A few decades ago our staff reached a high of 50 FTE. In 2001, we were at 36 FTE. By 2012, we were down to 18 FTE. That number included five (5) staff attorneys. Since then, we have been able to reduce our number of staff attorneys to three (3) and still operate efficiently with 16 FTE. Having well-qualified judges means the judges can carry more workload themselves rather than relying on staff attorneys. We have achieved the second benchmark - judicial efficiency. The professionalism of the court has led to significant improvements in reducing case delays and achieving timely decisions. The pretrial process with tight timelines and court-like requirements for discovery and identification of disputed issues has reduced delays and promoted settlements.

The third benchmark is fairness and impartiality of decisions. Our decision statistics are consistent with COTA's fair treatment of taxpayers. Although our fairness numbers are very good, impartiality should not be measured by crude statistical analysis. Our decisions are supposed to be fair and impartial based on testimony and documentation presented which are consistent with evidentiary and procedural rules. Those decisions are subject to judicial review. They are not supposed to be made based simply on flipping a coin to maintain an artificial 50/50 balance.

The fourth concern justifying the change into a court in 2008 was the need for well-qualified adjudicators. Having qualified judges was identified as "essential" and that they needed to be capable of rendering "judgment on . . . very complex tax and legal matters." These matters include not just valuation issues, but range from statutory interpretation to procedural questions – discovery issues, privileged information, protective orders for confidential matters, rulings on evidentiary issues, administrative law, and analysis of Kansas property law. From time to time, we have multi-day and even week-long evidentiary trials.

Therefore, COTA needs as tax judges well-qualified professionals who are capable of analyzing and addressing sophisticated and difficult legal and tax issues. While some cases are more simple, we do indeed have periodic cases of significant overall complexity.

HB 2614 would make it much less likely that qualified tax professionals – such as attorneys and CPAs – would be willing to serve as COTA tax judges. Tax expertise is in high demand and low supply. Reducing salaries will make it that much more difficult in the future to find qualified persons willing to serve.

HB 2614 would transfer the judge removal process away from the Governor and to the district courts. This could subject judges to endless lawsuits by disgruntled parties. This in turn would again make it that much more difficult to find qualified persons willing to serve. COTA would be the only administrative agency/tribunal with this removal mechanism. It would also subject the Governor to the potential for collateral political attacks on his appointments through the courts.

Among other things, this bill seeks to give a stamp of approval to a particular business model that appears to constitute the unauthorized practice of law – sometimes referred to as "UPL." Appellate cases such as *Perkins, Martinez, Babe Houser,* and *Miller* establish clear lines regarding what constitutes UPL.

Yet it is not my purpose today to set out in detail how this business model is either inconsistent with or in violation of Kansas law. We have issued orders addressing those details, and several of those orders are currently the subject of judicial review at the Kansas Court of Appeals. It would not be proper for me to comment at length about pending cases. Our orders speak for themselves.

Adoption of HB 2614 without any professional constraints would remove the currently existing ethical prohibitions against solicitation and filing frivolous claims.

As noted in the Judicial Council's white paper, with a bill like HB 2614, the legislature arguably would be usurping the constitutional authority of the Kansas Supreme Court to regulate and define the practice of law. This would be ironic at a time when the legislature and governor are asserting that the Kansas Supreme Court has usurped the legislature's constitutional role to fund education, and determine its appropriate level.

In any event, pending appellate court cases should resolve the UPL issues, one way or the other, without the necessity of HB 2614. And thus it makes sense to wait for decisions from the appellate courts so that any statutory approach can be crafted with full recognition of appellate court guidelines on UPL.

For all these reasons, COTA opposes HB 2614.

HB 2614 also addresses matters relating to evidentiary burdens and similar substantive and procedural issues. These relate to matters separate from the general operations of the Court. Therefore, we do not necessarily oppose the bill on the basis of these particular points. But it is appropriate for us to draw your attention to some concerns about them. Some provisions, for example, may have unintended consequences.

HB 2614 limits a board member's continued service to 90 days after expiration of his or her term. As we have seen in recent years, positions often remain unfilled for longer than 90 days. Judge Cooper and I, for example, have terms that end at the same time. If we were not timely replaced and something then happened to the other judge or chief hearing officer, the regular division would screech to a halt. It would be unable to render any decisions.

HB 2614 adds an optional appeal to the district courts before appealing to the court of appeals. This will cause judicial inefficiency. It creates an extra level of appeal. As indicated in connection with the 2008 change to COTA, district judges generally do not want to handle these cases. District judges do not generally have the training or background to handle tax cases. Finally, the vast majority of tax appeal cases come from the urban counties of Johnson,

Wyandotte, Shawnee, and Sedgwick, where district courts already are understaffed and district judges are overworked.

Last year, regarding taxpayer's income and expense information relative to commercial rental property, the legislature passed a law that clearly established when a taxpayer had to provide that information to shift the evidentiary burden to the county. Last year's law identified it as 30 days after the informal hearing. HB 2614 moves the timeframe much later – to some vague period after filing the notice of appeal. This income and expense information substantially facilitates settlement, and by allowing the information to be provided so late in the process, it will minimize the possibility of settlement prior to filing a formal tax appeal. This is judicially inefficient.

This bill requires blanket and mandatory acceptance of a taxpayer's property-specific appraisal without an adjudication of credibility or bias, or the reasonableness of its analysis and calculations. This mandate may well violate constitutional requirements of due process and of uniform and equal valuation.

To summarize, HB 2614 is a broad attempt to de-professionalize COTA, its operations, and its judges. It is a vast step back from the four (4) benchmarks identified as concerns in 2007 and 2008. In any event, whether we are a board or a court, we will endeavor to render the best and most impartial decisions we can – and do that within whatever constraints are placed upon us.

Thank you for this opportunity to appear before you today.

I am prepared to try and answer any questions you might have.

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Sam Brownback, Governor

Sam H. Sheldon, Chief Judge
James D. Cooper, Judge
Ronald C. Mason, Judge

To: Kansas House Taxation Committee
Re: **HB 2614 – Supplemental Submission**
Date: Hearings on February 19 & 20, 2014

As a supplement to the written submission offered on behalf of the Court of Tax Appeals, the following information and documents are attached:

1. A summary of the statistics relating to decisions in valuation cases for 2012 and 2013.

2. Council on State Taxation (COST), *The Best and Worst of State Tax Administration – Scorecard on Tax Appeals & Procedurual Requirements, December 2013.*

3. A Kansas Bar Association abstract of the Kansas Supreme Court case of *Kansas City Mall Associates Inc. v. The Unified Government of Wyandotte County/Kansas City, Kansas,* Docket No. 102,163 (decision issued March 16, 2013)

4. The Kansas Supreme Court Syllabus for the case referenced in Item 3 above.

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2012

COTA Regular Divison Cases Closed January 1, 2012 to December 31, 2012

	EQ	PR	TOTAL
Denied	88	37	*125*
Dismissed	823	701	1524
Granted	41	12	*53*
Partial	98	22	*120*
Settled	1	0	1
Stipulated	829	187	1016
	1880	959	2839

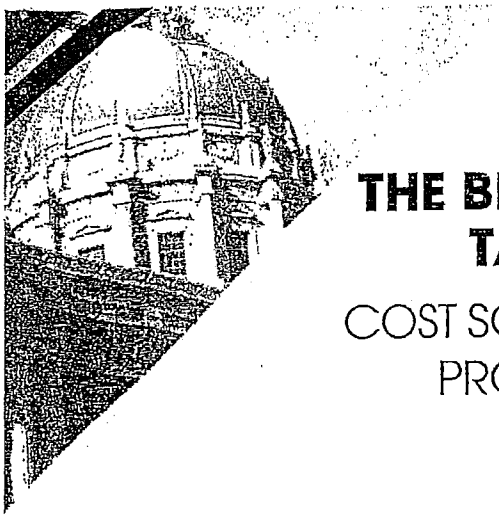
2012 Total Hearings/Decisions	*298*	
2012 Hearing Results		
County Favorable		**41.95%**
100% Taxpayer Favorable	17.79%	
Partially Taxpayer Favorable	40.27%	
Taxpayer Favorable		**58.05%**
2012 Dismissal-to-Hearings Ratio		5.11

2013

COTA Regular Divison Cases Closed January 1, 2013 to December 31, 2013

	EQ	PR	TOTAL
Denied	40	43	*83*
Dismissed	447	154	601
Granted	7	16	*23*
Partial	30	77	*107*
Settled	9	0	9
Stipulated	282	71	353
	815	361	1176

2013 Total Hearings/Decisions	*213*	
2013 Hearing Results		
County Favorable		**38.97%**
100% Taxpayer Favorable	10.80%	
Partially Taxpayer Favorable	50.23%	
Taxpayer Favorable		**61.03%**
2013 Dismissal-to-Hearings Ratio		2.82



COST
COUNCIL ON STATE TAXATION

THE BEST AND WORST OF STATE TAX ADMINISTRATION

COST SCORECARD ON TAX APPEALS & PROCEDURAL REQUIREMENTS

December 2013

Douglas L. Lindholm[1]
Ferdinand S. Hogroian
Fredrick J. Nicely

2013

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EXECUTIVE SUMMARY

The Council On State Taxation (COST) has long monitored and commented on state tax appeals processes and administrative practices. Part of that effort has resulted in the regular publication of a scorecard ranking the states. The focus is on the states' adoption of procedural practices which impact the fairness of the states' laws and regulations for state tax administration and appeal of state tax matters. Why are these issues so important? Although compliance with state tax statutes and regulations is subject to audit scrutiny, the percentage of taxpayers actually audited is small. As a result, our federal and state tax systems are premised, to a great degree, on voluntary compliance. It is a common truth that taxpayers will more fully and willingly comply with a tax system they perceive to be balanced, fair, and effective. Taxpayers operating in a system they perceive as oppressive, unfair, or otherwise biased are less likely to voluntarily comply. The clear message to state legislatures is that they must be sensitive to the compliance implications and competitiveness concerns created by poor tax administrative rules and ineffective tax appeal systems.

The COST Scorecard on Tax Appeals & Procedural Requirements seeks to objectively evaluate state statutes and rules that govern the degree of taxpayer access to an independent appeals process and state treatment of selected procedural elements that impact taxpayers' perceptions of fairness and efficiency. For these purposes, the essential elements of an effective and independent state tax appeals process are as follows:

- The appeals forum must be truly independent;
- Taxpayers must not be forced to pay or post a bond prior to an independent hearing and resolution of a dispute;
- The record for further appeals must be established before an independent body; and
- The arbiter at the hearing must be well-versed in the intricacies of state tax laws and concepts.

The procedural elements evaluated in this Scorecard consider whether the state has adopted:

- Even-handed statutes of limitations for refunds and assessments;
- Equalized interest rates on refunds and assessments;
- Due dates for corporate income tax returns at least 30 days beyond the federal due date, with an automatic extension of the state return due date based on the federal extension;
- Adequate time to file a protest before an independent dispute forum;
- Reasonable and clearly defined procedures for filing amended state income/franchise tax returns following

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an adjustment to a taxpayer's federal corporate tax liability; and

- Transparency in the form of published letter rulings (redacted) and administrative/tax tribunal decisions (both new for this Scorecard).

Further, the Scorecard identifies certain ineffective, burdensome or inequitable practices not otherwise reflected in the Scorecard categories.

2013 Top-Ranked States

Maine	A
Ohio	A
Alaska	A–
Arizona	A–
Kansas	A–
Montana	A–
Pennsyvania	A–

2013 Bottom-Ranked States

California	D–
Lousiana	D–
Alabama	D
Colorado	D
Arkansas	C–
Nevada	C–

Awards & Demerits

While many states adopted notable improvements since the 2010 Scorecard (for example, Kansas, Maine, Ohio, and North Carolina posted solid gains), certain states deserve special recognition for adopting multiple changes in accordance with COST's recommendations for fair and efficient tax administration. Unfortunately, a few states missed opportunities to make bold reforms or, worse, exacerbated already unfair and punitive practices. Below are COST's awards and demerits, respectively, for some of these "notable" states.

Most Improved

- **Pennsylvania** leapt from a D and a "bottom states" ranking to an A- and a "top states" ranking, mainly through legislation adopted in 2012 (H.B. 761) and 2013 (H.B. 465). In particular, Pennsylvania's ranking was helped by adopting reforms to provide independence in tax appeals heard by the Board of Finance and Revenue. Like other states embracing independent tax appeals tribunals, Pennsylvania received a boost in the Scorecard's new "transparency" category due to the statutory requirement that the Board issue written decisions.

The clear message to state legislatures is that they must be sensitive to the compliance implications and competitiveness concerns created by poor tax administrative rules and ineffective tax appeal systems.

Honorable Mention

- **Georgia** rose from a C- to a B, largely based on its adoption and implementation of the Georgia Tax Tribunal, which issued its first published opinion on October 1, 2013. Georgia also shed a point by not requiring prepayment or bond to appeal to the Tribunal.
- **Illinois** improved from a D to a B-, in large part due to the laudable adoption of the Illinois Independent Tax Tribunal. Enacting independent tax tribunal legislation in Illinois was a multiyear effort that ultimately was successful due to strong, bipartisan champions in the Illinois General Assembly, the tireless efforts of the Taxpayers' Federation of Illinois and the Illinois Chamber of Commerce, and assistance from a dedicated group of Illinois SALT professionals. Unfortunately, however, implementation of the tribunal has not met expectations (see Demerits, below).
- **New Mexico** rose from a D to a B by adopting several reforms, including, importantly, extending the time period to protest an assessment from 30 to 90 days. New Mexico also adopted several of COST's recommendations regarding the State's requirements to report federal tax changes and the ability to claim a refund resulting from such changes.
- **Oklahoma** improved from a C- to a B+, based primarily on providing a *de novo* review of appeals at the district court and, critically, removing prepayment requirements for appeals.

Demerits

- **Alabama** lamentably failed to establish an Alabama Tax Appeals Commission ("ATAC") again this year, missing multiple opportunities to improve its tax administration and business climate. The legislation, containing the ABA Model Act for

independence in the tax appeals system alongside other reforms, was amended to address concerns raised by Governor Bentley after his "pocket veto" last year, but still failed to pass. We hope that 2014 is the year the legislature will finally push this legislation over the top; there is no reason why Alabama can't join Pennsylvania in its leap from worst to first.

- **Illinois** unfortunately receives a demerit in our Scorecard for failing to appoint tribunal judges according to the tribunal's own statutory requirements. While the former Associate Chief, Criminal Division for the U.S. Attorney's Office in Chicago has an impressive resume, his resume does not reflect the "substantial knowledge of State tax laws" required by statute for an administrative law judge in the tax tribunal. Thus, the Governor's appointment of a career prosecutor of white-collar crimes as Chief ALJ is a significant concern for taxpayers looking to the tribunal for impartiality and tax expertise. In addition, implementation of the tribunal was delayed at the last minute, producing substantial uncertainty at the time as to its future.
- **Mississippi** took an unfortunate tumble, from a B+ to a C+, despite fixing its open-ended statute of limitations last year. We assessed two points related to the decision in *Equifax, Inc. v. State Tax Commission* (No. 2010-CT-01857-SCT, June 20, 2013), one regarding the failure to apply the statutory requirements for a trial *de novo*, the other for throwing the burden of refuting the Department of Revenue's alternative apportionment on the taxpayer (with penalties!). The decision stacks the deck in the favor of the Department, and is the antithesis of consistency and fairness in state tax administration.
- **The District of Columbia and Wisconsin** brought home an award of sorts: highest interest rate disparity between assessments and refunds among any of the states. They both also took dishonorable mention for increasing a preexisting interest rate disparity: the District of Columbia went from 10% (compounded daily) for underpayments and 6% (simple interest) for overpayments, to 2% interest for overpayments beginning in 2013; and Wisconsin went from 12% for underpayments and 9% for overpayments to 3% interest for overpayments, beginning with refunds paid on or after July 2, 2013.

By focusing on objective criteria, the 2013 Scorecard gives states the opportunity to enact corrective legislation as a means of improving business climates.

ABOUT THE SCORECARD

This Scorecard is the fifth published effort by the Council On State Taxation (COST) to objectively analyze state treatment of significant procedural and appeal issues that reflect whether states provide fair, efficient, and customer-focused tax administration. This Scorecard expands on and updates the 2001, 2004, 2007, and 2010 versions[2] and serves as a tool for policymakers seeking to improve tax administration and the business climate in their states. As with previous versions, this year's Scorecard is designed to provide objective criteria and research by which to judge state tax administration.

The Scorecard's standards for the "best" in state tax administration remain consistent, but in this version COST undertook to decrease the emphasis on corporate taxes and better reflect overall tax administration in the states. As a result, two previous categories specifically applicable to corporate income-based return filing—filing deadlines and reporting federal adjustments—were combined into one category, with the weight for these items adjusted accordingly. COST will continue to seek ways to expand the scope of the Scorecard to better reflect the breadth of state tax administrative practices. This Scorecard also includes a new category on transparency in state tax administration, focused on publication of redacted letter rulings and administrative and/or tax tribunal decisions.

Objectivity of Scorecard

A note on objectivity: the Scorecard is a counterpart to the periodic subjective surveys presented by *CFO Magazine* in April, 2011 and prior years.[3] While the Scorecard evaluates each state's statutory and regulatory scheme against objective criteria, *CFO Magazine* asked corporate tax executives questions regarding their subjective views of the states' tax environments.

To properly gauge taxpayer responses to specific state administrative systems, the approach taken by COST (assessing objective criteria) and the approach taken by *CFO Magazine* (compiling subjective taxpayer responses) should be viewed in conjunction. Taken separately, each approach may be fairly criticized. Analyzing a set of objective criteria creates a useful benchmark for comparison of administrative practices from state to state, but fails to recognize burdensome or unfair administrative practices applied within a sound

statutory framework. Conversely, an evaluation of taxpayer responses to subjective questions might mask a deficient statutory framework by recognizing only the goodwill engendered by fair and competent tax administration.

GRADING THE STATES

The first part of the Scorecard evaluates state tax appeals processes by asking two questions: 1) whether the appeals system is truly independent, and 2) whether a taxpayer must prepay the disputed tax or assessment prior to an opportunity for an independent hearing. Two other considerations are also paramount, however, in evaluating appeals systems, and are addressed in these two columns of the Scorecard: 3) whether the tribunal's judges are required to have experience in evaluating the complexities of state tax law, and 4) whether the taxpayer has the opportunity for a "hearing of record" (i.e., trial *de novo*) at an independent tribunal that would form the basis of further appeals. Together, these requirements mirror the essential components of the *Model State Administrative Tax Tribunal Act* developed by the State and Local Tax Committee of the American Bar Association which has been proposed, with COST support, in a number of states. It is COST's view that these elements, at a minimum, should be a part of any state's tax appeals process to achieve fairness, efficiency and a customer-focused tax environment.

The procedural elements evaluated in this Scorecard consider whether the state has adopted:

- Even-handed statutes of limitations for refunds and assessments;
- Equalized interest rates on refunds and assessments;
- Due dates for corporate income tax returns at least 30 days beyond the federal due date with an automatic extension of the state return due date based on the federal extension;
- Adequate time to file a protest before an independent dispute forum;
- Reasonable and clearly defined procedures for filing amended state income/franchise tax returns following an adjustment to a taxpayer's federal corporate tax liability; and
- Transparency in the form of published letter rulings (redacted) and administrative/tax tribunal decisions.

It is our hope that publication of this Scorecard will spur policymakers towards additional improvements in the rules for tax administration and the independent appeal of tax matters in all states.

The Scorecard also identifies and evaluates any additional ineffective, burdensome or inequitable practices, such as contingent fee audits, duplicative local revenue departments, use of outside counsel to litigate cases, retroactive penalties and interest, or application of False Claims Acts/*Qui Tam* actions to state tax disputes.

By focusing on objective criteria, the 2013 Scorecard gives states the opportunity to enact corrective legislation as a means of improving business climates. Indeed, since the publication of the 2010 COST Scorecard, many states have taken steps to improve their administrative and appeals processes. Some of the more significant improvements are noted in our "awards" section of the Scorecard, above. It is our hope that publication of this Scorecard will spur policymakers towards additional improvements in the rules for tax administration and the independent appeal of tax matters in all states.

Scoring System

Point totals for the Scorecard are determined by assessing states 0 to 3 points for the two categories that evaluate state appeals systems, and 0 to 2 points for each procedural practice. Point totals for each category are increased based on the severity of the state's deviation from COST's recommendations for achieving a balanced, fair and effective tax system. Specific scores are based on COST's determination of the relative importance of specific issues to business taxpayers, and the presence or absence of mitigating and/or aggravating circumstances. In general, one point was assigned to the "Other Issues" category for each issue found to impact a state's fair and efficient tax administration. The final grades are based on the following scale:

Overall Score

- A = 0 to 3 points
- B = 4 to 7 points
- C = 8 to 10 points
- D = 11 to 13 points
- F = More than 13 points

Summary Results

The Summary Table on Page 5 ranks each state's statutes and rules in the areas described above. Although much progress has been made since the inaugural COST Scorecard, numerous states are significantly behind the curve in providing fair and efficient tax administration and appeals procedures. Detailed survey data for each state is provided beginning in the table on page 11.

	Independent Dispute Forum	Pay-to-Play	Even-handed Statute of Limitations	Equal Interest Rates	Ample Protest Period	Corporate Return Filing Burden	Transparency in Guidance & Rulings	Other Issues	Total Points	Overall Grade
AL	2	2	0	0	2	2	1	2	11	D
AK	0	1	0	0	0	1	1	0	3	A–
AZ	0	0	0	0	1	1	1	0	3	A–
AR	3	2	1	0	0	2	2	0	10	C–
CA	3	2	1	2	1	1	1	2	13	D–
CO	3	2	0	1	1	1	1	2	11	D
CT	1	0	0	2	0	2	1	0	6	B
DE	1	0	0	0	0	1	2	2	6	B
DC	1	1	0	2	1	1	2	1	9	C
FL	3	2	0	1	0	2	0	1	9	C
GA	0	1	0	0	1	1	1	2	6	B
HI	1	1	0	2	1	2	0	0	7	B–
ID	2	1	0	0	0	1	1	0	5	B
IL	0	1	0	0	0	2	0	4	7	B–
IN	0	1	0	1	0	1	0	1	4	B+
IA	3	0	0	0	0	1	0	0	4	B+
KS	0	1	0	1	0	1	0	0	3	A–
KY	1	1	1	2	1	1	1	1	9	C
LA	2	2	0	2	1	1	2	3	13	D–
ME	0	0	0	1	0	0	1	0	2	A
MD	0	0	0	0	1	2	2	0	5	B
MA	0	0	0	2	0	2	0	0	4	B+
MI	0	0	2	1	1	2	1	0	7	B–
MN	0	0	0	0	0	1	1	1	3	A–
MS	0	1	0	0	0	2	2	3	8	C+
MO	1	0	0	2	1	1	0	2	7	B–
MT	0	0	0	0	1	1	1	0	3	A–
NE	3	2	0	0	0	1	1	1	8	C+
NV	3	2	0	2	1	n/a	2	0	10	C–
NH	0	0	1	2	0	1	1	1	6	B
NJ	0	0	0	2	0	2	1	1	6	B
NM	3	2	0	0	0	0	0	1	6	B
NY	0	1	0	2	0	2	0	1	6	B
NC	0	1	0	0	1	1	1	0	4	B+
ND	3	0	1	1	1	1	2	0	9	C
OH	0	0	0	0	0	n/a	0	2	2	A
OK	1	0	0	0	0	1	1	1	4	B+
OR	0	1	0	0	1	1	1	1	5	B
PA	0	1	0	2	0	0	0	0	3	A–
RI	1	2	0	2	1	2	0	0	8	C+
SC	1	1	0	2	0	1	0	0	5	B
SD	3	2	0	0	0	1	2	0	8	C+
TN	3	2	0	0	0	1	1	1	8	C+
TX	2	2	0	1	1	1	0	1	8	C+
UT	1	1	0	0	1	1	0	0	4	B+
VT	3	1	0	2	0	2	1	0	9	C
VA	3	0	0	0	0	0	1	0	4	B+
WA	2	2	0	0	1	n/a	1	3	9	C
WV	0	1	0	2	0	2	1	0	6	B
WI	0	0	0	2	0	1	0	2	5	B
WY	0	1	0	2	2	n/a	1	0	6	B

BAROMETERS OF STATE TAX ADMINISTRATION

Fair, Efficient, Independent Appeals

Foremost in good tax administration is a fair and efficient tax appeal system. States with fair and efficient tax appeal systems share four essential elements:

- An independent tax tribunal;
- Tribunal judges with specific training and experience in tax law;
- No prepayment requirement (or bond posting) for taxpayers disputing a tax before receiving an independent, impartial hearing; and
- The record for further appeals is established before an independent body.

A state's ability to recognize the potential for error or bias in its tax department determinations and provide taxpayers access to an independent appeals tribunal is the most important indicator of the state's treatment of its tax customers.

Independent Tribunals: The tax court or tribunal must be truly independent. It must not be located within or report, directly or indirectly, to the department of revenue or to any subordinate executive agency. Without independence, the *appearance* of objectivity is simply not present. That perception, regardless of its accuracy, necessarily detracts from even exemplary personnel and work product of the adjudicative body. Independent tribunals are less likely to be perceived as driven by concerns over revenue collection, upholding departmental policies, or offending departmental decision-makers.

Today well over half the states provide an independent appeals process specifically dedicated to hearing tax cases. Although the structure and rules may differ from state to state, taxpayers in these states are able to establish a record for appeal in an independent adjudicative body, before judges well-versed in tax matters. The ability to reach an independent tribunal, non-judicial or judicial, without prepayment is another key factor of a fair and efficient appeals process. In addition, many tax dispute systems are designed to allow taxpayers and the state adequate opportunity to meet and discuss settlement opportunities before incurring the hazards and costs of litigation.

States without an independent tax tribunal or similar appeals system limit a taxpayer's real ability to challenge a state tax assessment. States that do not offer an independent tribunal, and/or force taxpayers to appeal based on a record established at a non-independent proceeding, are less attractive to businesses and are more likely to see taxpayers engage in structural tax planning to minimize potential exposure in the state.

A state's ability to recognize the potential for error or bias in its tax department determinations and provide taxpayers access to an independent appeals tribunal is the most important indicator of the state's treatment of its tax customers.

Trained Judges: Tax tribunal judges must be specifically trained as tax attorneys and have significant state tax experience, and the tribunal should be dedicated solely to deciding tax issues. The tribunal (or court) should be structured to accommodate a range of disputes from less complex tax issues, such as those arising from personal income tax matters, to highly complex corporate tax disputes. The tremendous growth and complexity in the body of tax law and the nature of our multi-jurisdictional economy makes this consideration paramount. Judges not trained in tax law are less able to decide complex corporate tax cases on their merit and a perception exists (rightly or wrongly) that the *revenue impact* of these complex cases too often helps guide decision-makers through the fog of complicated tax statutes, regulations, and precedent. That perception reflects poorly on a state's business climate and reputation as a fair and competitive place to do business.

No Prepayment Required: Taxpayers should not be required to post bond or pay a disputed tax before an initial hearing. It is unfathomable that taxpayers may still be denied a fair hearing before being deprived of property (*i.e.*, disputed taxes). It is inherently inequitable to force a corporate taxpayer to pay a tax assessment, often based on the untested assertions of a single auditor or audit team, without the benefit of a hearing and the ability to establish a record before an independent trier of fact. Free access to an independent hearing without having one's property confiscated by the law is especially important during difficult state economic climates—once tax money is paid into the system, it is often difficult or impossible to wrest a refund from the state, even after disputes are resolved in the taxpayer's favor. There are three degrees of state prepayment requirements:

- **Full "Pay to Play":** Since Massachusetts and Hawaii eliminated their full "pay-to-play" requirements, we are unaware of any state that requires taxpayers to pay an assessed tax upon receipt of a notice of assessment without an opportunity to contest that assessment before even a non-independent tax forum such as the tax commissioner or an administrative hearing officer. Such systems were the scourge of fair tax administration; their elimination represents a significant step forward in fairness.

- **Partial "Pay to Play":** While no state currently requires payment of a disputed tax prior to the administrative appeals process, some states still require payment of the tax or posting of a bond to obtain access to the circuit or district court level in the case of an adverse decision by an independent non-judicial body, or if the taxpayer elects to bypass the non-judicial forum and proceed directly to the circuit or district court level. In those states, taxpayers are at least granted a hearing before a non-judicial tax tribunal, an administrative hearing officer, or the state tax commissioner before such payment is extracted. The perception of unfairness is more acute, of course, in partial pay-to-play states where the initial hearing is before an adjudicatory body that is not independent of the state's DOR.
- **No "Pay to Play":** In some states taxpayers do not have to pay a disputed tax until all appeals are exhausted. These systems are perceived to be the most fair—in large part because taxpayers are not held hostage by the jurisdiction in possession of the taxpayer's funds.

Jeopardy Situations Justify Prepayment: We do not question the necessity of state jeopardy assessment and collection authority. If a state department of revenue feels that a particular tax assessment is in jeopardy based on the facts and circumstances before it, it should certainly issue a jeopardy assessment on that amount. In those circumstances states need the flexibility to move quickly and should do so as long as minimum due process protections are afforded. Such assessments are a legitimate means of protecting the state fisc. However, the jeopardy assessments should *only* be used in extreme circumstances, and the burden of proving that the assessment is in jeopardy should fall on the state. It would be an extremely unusual circumstance for a state to find it necessary to impose a jeopardy assessment on a publicly traded company.

Basic Procedural Provisions Reflecting Good Tax Administration

In addition to an independent tax tribunal accessible without prepayment, state tax administration should include a number of fundamental components necessary to a fair, efficient, and customer-focused state tax system. The following are basic procedural elements that should be included in every state's law:

Even-Handed Statutes of Limitations: Statutes of limitation should apply even-handedly to both assessments and refund claims. Forcing taxpayers to meet one statute to apply for a refund while granting the tax administrator additional time to issue an assessment is unfair and should not be tolerated in a voluntary tax system. A three-year statute of limitations for assessments should be accompanied by a three-year statute of limitations for refund claims. States with unusual (biased) rules or with unequal statutes of limitations to report federal adjustments are also noted. In addition, claims for refund based on constitutional challenges should not be singled out for discriminatory treatment by shortening the statute of limitations.

Transparency through publication of tax guidance and rulings is widely recognized as a hallmark of fair and efficient tax administration. Simply put, "secret tax laws" benefit neither the state in its administration of the statutes nor the public in complying with them.

Equalized Interest Rates: Interest rates should apply equally to both assessments and refund claims. Failure to equalize interest rates diminishes the value of the taxpayer's remedy of recovering tax monies to which it is legally entitled. Interest rates are meant to compensate for the lost time-value of money and should apply equally to both parties. The date from which interest begins to run may also be important. Because states levy interest from the due date of the return, taxpayers should receive interest from the date of the overpayment of the tax on an original return, although no interest is acceptable if paid within a reasonable time period, say 60 days, to allow state processing of the payment. For separate refund claims, interest should be paid from the date of overpayment of the tax—typically the due date of the original return—and not the date of the filing of the refund claim. Refunds and liabilities for the same taxpayer should also offset each other in calculating the amount of interest and penalty due.

Protest Periods: The first step in the administrative process in most states is the issuance of an assessment with notification of a right to protest. That protest period should be at least 60 days and preferably 90 days. The American Bar Association's *Model State Administrative Tax Tribunal Act* recommends a 90-day protest period. Any protest period shorter than 60 days is unreasonable and could jeopardize a taxpayer's ability to fully respond to a proposed assessment. A notice period of 60 days or longer is of increasing importance in a global economy where taxpayers are working to comply with the laws of numerous jurisdictions.

Many states have increased the number of days to submit a protest as compared to prior studies. Even so, numerous states still offer less than 60 days to file protests. While all of the states now generally offer at least 30 days to protest a tax assessment, COST hopes to see all states grant at least 60 days and preferably 90 days.

6-16 7

Return Due Date and Automatic Extensions: The state's corporate income tax return due date should be at least 30 days after the federal tax return due date, or the state's extended due date should be at least 30 days after the federal extended due date. Further, the state's corporate income tax return due date should be automatically extended simply by obtaining a federal extension. By extending state due dates to this point, state tax administrators allow taxpayers to file correct returns based on complete federal return information. Although corporate taxpayers often file a single consolidated federal return, the adjustments necessary to generate the multitude of state tax returns are complex and time-consuming. A minimum of 30 days beyond the extended federal due date is needed to complete these adjustments. To ease administrative burdens, an automatic state extension should only require attaching a copy of the extended federal return with the state return to qualify.

State Reporting Requirements for Federal Tax Changes: For a large multistate company and subsidiaries, an adjustment or change to a prior federal return can trigger hundreds, if not thousands, of amended return requirements at the state level. Many states have inconsistent and unreasonable requirements for taxpayers attempting to report federal tax changes from prior years to the states. Such circumstances may arise upon the final resolution of a legal dispute on the federal return or upon conclusion of a multiple-year federal audit that impacts state returns, usually after state statutes of limitation have expired. Because businesses typically operate in multiple jurisdictions, confusion arises over when notice of a federal change must be filed with a state (final determination) and how it is to be filed (specialized forms are often hard to obtain or difficult to complete). In many states, the time period allowed to file the numerous reports required to reflect a federal change is also far too short.

To address these concerns, it is important that states clearly define, by regulation or statute, what constitutes a "final determination" that will trigger a taxpayer's requirement to report the change to affected states. Taxpayers should be provided at least six months (or 180 days) to file an amended return or worksheet to the state to notify it of the changes. Finally, if the normal statute of limitations for the issuance of a tax assessment has expired, the only tax issues subject to adjustment when a taxpayer reports a federal tax change should be the federal tax changes. The statute of limitations should not be reopened for issues beyond the scope of the federal tax changes. The following are essential elements of a state reporting procedure for changes made to a taxpayer's federal income tax return:

- **Final Determination:** All states imposing a corporate income tax require a taxpayer to report changes in federal taxable income to the state. In the majority of states the requirement is triggered when a "final determination" is made regarding the federal income tax return (*e.g.*, issuance of a Revenue Agent's Report). However, some states have no such definition. Although the Multistate Tax Commission promulgated a model uniform statute for reporting federal tax adjustments, with accompanying model regulation, in August, 2003, the states are not using a uniform definition as to when a federal tax change constitutes a "final determination" to be reported to the state.[4] This is unfortunate because it unnecessarily creates compliance problems and wrongfully subjects taxpayers to concomitant penalties and interest for noncompliance. COST suggests the following "best practice" as a workable definition, primarily based on the statutory definition of "final determination" used by New Hampshire.

  "A 'final determination' is deemed to occur when the latest of any of the following activities occurs with respect to a federal taxable year:

  (1) The taxpayer has made a payment of any additional income tax liability resulting from a federal audit, the taxpayer has not filed a petition for redetermination or claim for refund for the portions of the audit for which payment was made and the time in which to file such petition or claim has lapsed.

  (2) The taxpayer has received a refund from the U.S. Treasury that resulted from a federal audit.

  (3) The taxpayer has signed a federal Form 870-AD or other IRS form consenting to the deficiency or consenting to any over-assessment.

  (4) The taxpayer's time for filing a petition for redetermination with the U.S. Tax Court has expired.

  (5) The taxpayer and the IRS enter into a closing agreement.

  (6) A decision from the U.S. Tax Court, district court, court of appeals, Court of Claims, or Supreme Court becomes final."

- **Time Period for Reporting:** Taxpayers face a variety of due dates with respect to reporting IRS adjustments, from 30 days to 2 years. COST recommends at least 180 days to report IRS adjustments to states, with the ideal time frame one year or greater. A minimum of 180 days (or six months) is required to allow multijurisdictional taxpayers adequate time to report federal tax changes to the state and local level. Presently, thirteen states allow a reporting period of 180 days or more (with the loss of Ohio due to adoption of a gross receipts tax, this represents a net gain of four states from the last Scorecard). Kudos to Oklahoma and Virginia for allowing taxpayers one year to report such changes.
- **State Statutes Waived Only for Federal Tax Changes:** Some states allow every aspect of the state return to be

open for adjustment following a change in federal income tax liability even though the state's normal statute of limitations has expired. Other states have statutes that are not clear (and/or lack case law) to put the taxpayer on notice that only federal tax changes are open for audit when the state's normal statute of limitations period has passed. When the normal time period for the state DOR to assess additional tax and a taxpayer to claim a refund has expired, only those items that are changed as a result of the federal income tax change should be open for adjustment (tax due and refund).

Transparency in Tax Guidance and Administrative Rulings

As illustrated by the American Institute of Certified Public Accountants' 2003 publication, "Guiding Principles for Tax Law Transparency," and the recent efforts of the American Bar Association's Section of Taxation, transparency through publication of tax guidance and rulings is widely recognized as a hallmark of fair and efficient tax administration. Simply put, "secret tax laws" benefit neither the state in its administration of the statutes nor the public in complying with them. While individual taxpayers may perceive advantages in obtaining what they believe is a beneficial ruling, ultimately the broader taxpaying public pays the price for inconsistency in the application of the tax laws. Tax Analysts has taken a leading role in advocating for transparency in state tax administration. In a recent article, Tax Analysts' editors noted that "it is difficult to measure the transparency of a state's tax system... But to be most effective for purposes of ranking, measures of transparency must be objective. That is, the measures must be easily identified through research and they must be attainable by all states."[5] In addition to independent tax tribunals, Tax Analysts identifies publication of letter rulings and administrative-level opinions as areas in which states can be ranked (indeed, Tax Analysts performed preliminary research that they kindly shared and we incorporated into this Scorecard).

COST recognizes that there are practical limitations on publication of tax guidance. Clearly, for letter rulings and informal administrative hearings to be effective (and utilized), taxpayers' identities must be redacted. In some cases, not publishing, or providing generalized guidance, for redundant ruling requests or requests for interpretation of unambiguous law may be justified. Further, some states may have a dearth of controversy in certain areas of tax, explaining a lack of published rulings on, for example, corporate income tax issues. Regarding administrative proceedings, a state may choose not to publish informal administrative hearings, but then publish a tax tribunal decision where the record is established. The fundamental question that we seek to answer is: does the state provide a meaningful and reasonably complete library of letter rulings and administrative decisions, so that the broader taxpaying community may ascertain how the tax law has been applied and thus may be applied under similar facts. This may be one of the more difficult areas to measure, but, as Tax Analysts suggests, is essential nonetheless for a measurement of fairness in tax administration.

Other Significant Procedural Issues

Like the 2010 Scorecard, the 2013 Scorecard includes an "Other Issues" column. In preparing the Scorecard, we surveyed tax practitioners, asking them to identify additional issues that impact fair and efficient tax administration in the state. This Scorecard assigns points (generally one point per issue) to those states identified as having negative practices; the adjustments are identified in the chart following this discussion. Adjustments were made based on, but not limited to, the following practices: independent local revenue departments which create disconformity and complexity; use of outside paid counsel to litigate tax matters (sometimes fees for these counsels are directly charged to taxpayers); the application of statutes on a retroactive basis; and the imposition of retroactive penalties and interest. Finally, we note whether a state has utilized False Claims Acts/*Qui Tam* actions for state tax disputes. Applying such "whistleblower" statutes in the state tax arena—where significant "grey" areas exist—undermines the role of the tax administrator in impartially applying the tax laws, creates uncertainty and conflicting interpretations of complex tax issues, applies onerous penalties to non-fraudulent behavior, and creates perverse incentives to increase the cost of litigation to force settlement. States should guard against utilizing these and similar unfair and burdensome practices.

DETAILED SURVEY DATA

The table beginning on page 11 provides detailed survey data for each state. At least one practitioner from each state and the tax agency of each state were asked to review and offer corrections to the data and/or related survey questions (below). Where received, responses were integrated into the chart as appropriate to reflect the current status of the law in each state. COST extends its gratitude to those practitioners and tax agency employees who assisted in compiling the data necessary for this study. Note that certain exceptions to the general rules may exist but were not included. Further, we were not always able to reconcile our research and the responses by in-state practitioners with the responses by the tax agency; this demonstrates the lack of clarity surrounding some of the issues. Accordingly, this document is not intended to be used as a comprehensive listing of legal authority for the issues identified, and taxpayers are cautioned to research individual state laws.

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Survey Questions for Practitioners and Administrators

1. Does the state have an even-handed statute of limitations for refunds and assessments?
2. Are the interest rates on assessments and refunds the same?
3. Does a taxpayer have at least 60 days to appeal an assessment?
4. For state taxes based on the taxpayer's federal corporate income tax return, is the state return due at least 30 days after the federal tax return due date?
5. Does a taxpayer automatically obtain an extension on filing its state tax return if the taxpayer has obtained a federal extension?
6. Does the state have an independent appeal forum dedicated to handling tax disputes (includes an administrative law judge if the ALJ's decision cannot be overridden by the revenue department)?
7. Excluding jeopardy assessments, is prepayment or posting of a bond required to have an independent appeal forum hearing?
8. What constitutes a "final determination" when a taxpayer has to report a change to its federal tax liability to the state?
9. Do non-federal tax changes, such as a change of liability reported to another state, also have to be reported (e.g., another state changes the taxpayer's apportionment)?
10. When do changes in the taxpayer's federal tax liability have to be reported to the state, and can a taxpayer obtain an extension?
11. What type of return/form is required to report a change in a taxpayer's federal tax liability to the state?
12. If the normal statute of limitations is closed for modifying the state tax return, is the revenue department limited to only making changes based on the federal tax changes?
13. Does the state issue binding, written guidance to requesting taxpayers (e.g., letter rulings), and does the state publish such (redacted) guidance with appropriate protections for taxpayer confidentiality?
14. Does an administrative adjudicatory body (e.g., tax agency hearings division and/or tax tribunal) that regularly hears tax cases or appeals publicly release its rulings?
15. What additional issues are impacting fair and efficient tax administration?

REAL ESTATE UPDATE

(Continued from Page 2)

KANSAS CITY MALL ASSOCIATES INC. V. THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/ KANSAS CITY, KANSAS
WYANDOTTE DISTRICT COURT – AFFIRMED
NO. 102,163 – MARCH 16, 2012
Eminent Domain

Attorneys: Douglas J. Patterson and Joseph R. Borich III, of Property Law Firm, LLC, Leawood, for appellant. Paul G. Schepers and Timothy P. Orrick, of Orrick & Associates, L.L.P., Overland Park, for appellee.

Facts: KC Mall initiated review of the court-appointed appraisers' award of $7.5 million for the Indian Springs Shopping Center, renamed Park West Business Center by KC Mall. The date of the taking was June 20, 2007. The 57.38-acre property underlies the main mall structure and four outbuildings, including a dental office that once housed Brotherhood Bank, an old Franklin Bank building, and two auto repair shops. KC Mall filed a motion in limine to exclude 2005 tax appeal documents filed by Joseph Kashani, the president of KC Mall, for four of five parcels that make up the subject property. In the tax appeal, Kashani estimated the value of the main mall at $1.5 million, the value of the former Dillard's that was part of the main mall at $1 million, the former Franklin Bank building at $100,000, and the former Brotherhood Bank building at $50,000. KC Mall's motion argued that it had filed the 2005 appeal only to force the Unified Government to abide by a Neighborhood Revitalization Plan. The plan was supposed to freeze property taxes for 10 years, starting in 1998; but the Unified Government raised the tax on the property in 2005. In the alternative, KC Mall argued that the "unit rule" prohibited admission of the tax appeal documents because they addressed only components of the property and not the entire tract. The trial court denied the motion and later conducted a full trial involving multiple experts and appraisals. The jury returned a verdict of $6.95 million.

Issues: Eminent domain

Held: Court rejected KC Mall's argument that the 2005 tax appeal was filed only to enforce the 10-year tax freeze. Court held the tax appeal goes to the weight of the evidence, not its admissibility and it was merely Kashani's explanation for why he filed the tax appeal, and he was afforded the opportunity to explain his rationale to the jury. Court stated the tax appeal evidence was relevant to the fair market value of the subject property. Court concluded that the 2005 tax appeal evidence was admissible for purpose of impeachment as well as substantive evidence because they qualified as admissions against interest of his company. Court also held that Kashani's position on four parcels in the tax appeal did not violate the unit rule. Court also rejected KC Mall' argument that the Unified Government's experts' appraisal report and testimony were inadmissible because the witnesses compared the subject property to retail malls, even though it was zoned at the time of taking as a business park. Court held that zoning is but one factor to consider in determining highest and best use, and the district court did not err by admitting the testimony and reports of the Unified Government's expert appraisers.

Statutes: K.S.A. 26-513; and K.S.A. 60-261, -460

(Continued on next page)

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 102,163

KANSAS CITY MALL ASSOCIATES, INC.,
Appellant,

v.

THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/ KANSAS CITY, KANSAS,
Appellee.

SYLLABUS BY THE COURT

1.

A landowner's out-of-court statements that are inconsistent with his or her valuation position at an eminent domain trial are relevant and admissible as admissions against interest for purposes of impeachment and as substantive evidence.

2.

Generally, the assessed valuation of property for tax purposes is not admissible as evidence of fair market value of property in an eminent domain action. But statements made by the owner about the property's value in an appeal of a tax assessment that are inconsistent with the owner's position in the eminent domain trial are admissible as admissions against interest.

3.

An award of compensation in an eminent domain action must reflect the fair market value of the property as a whole and cannot assign separate values to component parts of the property. But evidence of separate values of components of the subject property may be introduced to demonstrate how the value of the property as a whole is enhanced.

4.

Zoning classification is not dispositive of the issue of fair market value in an eminent domain proceeding, but it is a factor for the jury to consider when it determines the highest and best use of the subject property. If the highest and best use for a property is one other than that for which it is currently zoned, and there is a reasonable probability that the property will be rezoned to permit such use, evidence of that use is admissible.

Appeal from Wyandotte District Court; PHILIP L. SIEVE, judge. Opinion filed March 16, 2012. Affirmed.

Douglas J. Patterson, of Property Law Firm, LLC, of Leawood, argued the cause, and *Joseph R. Borich III*, of the same firm was with him on the briefs for appellant.

Paul G. Schepers, of Orrick & Associates, L.L.P., of Overland Park, argued the cause, and *Timothy P. Orrick*, of the same firm, was on the brief for appellee.

The opinion of the court was delivered by

BEIER, J.: This is an appeal from an award of compensation in an eminent domain action. Kansas City Mall Associates, Inc. (KC Mall), the owner of what was once the Indian Springs Shopping Center in Kansas City, argues that the district court erred by admitting evidence from a 2005 tax appeal as well as certain testimony and reports from appraisal experts for the condemning authority, the Unified Government of Wyandotte/County, Kansas City, Kansas (Unified Government). We are not persuaded by KC Mall's arguments and affirm the judgment of the district court.

KANSAS
ASSOCIATION OF
COUNTIES

Testimony of the Kansas Association of Counties
To the House Committee on Taxation
Opposing House Bill 2614 (Reverting COTA to BOTA)

February 19, 2014

Mr. Chairman and Members of the Committee:

House Bill 2614 is a comprehensive bill that would revert the Court of Tax Appeals to the Board of Tax Appeals and—more importantly—cause a wide array of changes to taxation policies in Kansas. These changes, however, do not improve our State's tax policy, and KAC subsequently opposes the bill. On Friday, February 14, KAC convened a conference call with a number of local officials who regularly interact with COTA. The group analyzed the bill and coordinated testimony to ensure this committee receives a comprehensive assessment of HB 2614. Our concerns include, but are not limited to, the following:

- Increasing value of property at small claims from $2 million to $5 million;
- Decreasing the salaries of board members;
- Accepting taxpayer's commercial appraisals;
- Cutting the USPSP adoption date;
- Lowering the interest rate to taxpayers who fail to pay taxes on time.

These all cause concern, and the conferees will address the issues according to their areas of expertise.

The point KAC wants to emphasize centers on pages 12 and 14 of the bill. This section eliminates a policy fix that this committee addressed last year in HB 2042. There, KAC brokered a compromise with the Kansas Realtors Association and the Kansas Appraisers Association to correct a loophole that allowed property owners the opportunity to spring information on appraisers immediately before hearings, which shifted the burden of proof to the county. The result was a system that did not give time for analysis or discussion regarding the property. Further, it led to needless hearings and expense because the taxpayer information often alleviates the need for a hearing. This committee's action in 2013 improved Kansas tax policy, and HB 2614 would undo that work.

If this committee intends to entertain HB 2614, KAC and the Kansas Appraisers ask that the policy remain in place to require taxpayers to provide the necessary information at the informal meetings to ensure a thoughtful process that can reduce the number of hearings before COTA. This is sound policy that just went into place, but is already saving the state, counties, and taxpayers significant costs.

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Another point of concern from the county perspective occurs on page 10. KAC is concerned about a blanket policy that property-specific appraisals conducted by private appraisers are to be automatically accepted by COTA. A simple application of incentives reveals the shortcomings in this policy. Taxpayers who prefer to pay less than the appraised value—and can pay less under the law—will inevitably lead to a market for private appraisers who are willing to undervalue property. And creating a legal structure that allows for no check on the process increases the risk of inequities and inconsistency in the appraisal process. This section is also likely to amount to an unlawful delegation of authority.

KAC's final concern occurs on page 14 in lines 27 through 41. Under the current law, the state charges taxpayers with interest for failing to pay taxes. The interest replaces the loss of revenue not paid on time. The current law requires two percentage points above the rate prescribed in K.S.A. 79-2968. The proposal in HB 2614 would lower the rate for failing to pay taxes by two percentage points below the normal rate. The counties are concerned that this will create a collections issue and make it more difficult to collect the taxes that individuals owe. Further, it is unsound policy—particularly in a time of limited revenue—to reduce the incentive to pay taxes in a timely manner. KAC and the counties oppose lowering the interest rate for individuals who do not adhere to the law.

There are additional concerns with HB 2614 that the other conferees will address. KAC is available to provide any information that might be helpful as you consider the bill. As it currently stands, however, we ask that you oppose HB 2614. Thank you for your consideration of our testimony.

Respectfully,

Nathan Eberline, Legal Counsel

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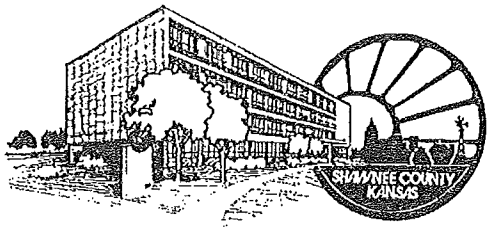

Shawnee County
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February 18, 2014

House Standing Committee on Taxation
Rep. Richard Carlson, Chairman
Kansas State Capitol
300 SW 10th St.
Topeka, KS 66612

RE: HB 2614

Chairman Carlson and other distinguished members of this committee:

The Shawnee County Board of County Commissioners opposes HB 2614 for many reasons, the most important of which are highlighted in turn, however this is not an exhaustive list.

Sec. 7, pg. 10 - Acceptance of Taxpayer's Appraisal by the Board

Shawnee County recommends the following language of Sec. 7, pg. 10, ln. 6-10, be deleted in its entirety:

> *If a taxpayer presents a property-specific appraisal conducted by a certified general appraiser which determines the subject property's valuation to be less than that determined by a mass real estate appraisal conducted by the county or district appraiser, then the taxpayer's property-specific appraisal shall be accepted by the board.*

Setting aside the fact that this language is an unconstitutional delegation of legislative authority to a non-governmental individual, it is also contrary to the Kansas Constitutional requirement that the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. Kan. Const. Art. 11 § 1(a).

Different appraisers can have vastly different opinions of value for the same property, but for different purposes. For example, in 2010 a single property in Shawnee County was appraised by three different appraisers and produced conflicting valuations. The mass appraisal conducted by Shawnee County produced a value of $9,482,000 using the income valuation approach and $9,969,470 using the cost approach. The appraisal conducted for the lender produced a value of $13,190,000 and the appraisal prepared for the tax representative produced a value of $7,250,000. The same property had sold in the open market on December 31, 2009 for $13,137,649.

Seeing this type of discrepancy in valuation is not an uncommon occurrence, and the change proposed to K.S.A. 74-2438 essentially says to throw all of those numbers into a hat and pick out the lowest one to get the appraised value. This gives no room for analysis of the purpose of the appraisal – whether it was done for ad valorem taxation or some other purpose. It disregards any requirement that the appraisal be compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). It simply rules that appraisal that concludes the lowest number is accepted as fair market value. This provision is simply absurd.

Sec. 4, pg. 8 & Sec. 12, pg. 14 – Timing of Receipt of Income & Expense Statements

In both Section 4 and Section 12 of the bill there appears a provision which abolishes a compromise that was reached during last year's session after a considerable amount of work. The proposed language removes the timing requirement for the County's receipt of the income and expense statements by the taxpayer. Requiring those statements to be received by the County within 30 days of the informal meeting ensures judicial economy by providing adequate time for the parties to review and discuss, increasing the chances of the matters being resolved without a hearing.

Sec. 2, Pg. 3 - Review of Final Orders

Section 2 of the bill changes the review court for final orders of the board of tax appeals to the district court *or* the court of appeals at the discretion of the appellant. This unravels an amendment to K.S.A. 74-2426 adopted by the legislature in 2008 through House Bill 2018, wherein the review court was named the court of appeals for all actions before the court of tax appeals. Prior to 2008, the review court was the district court or the court of appeals depending upon the action.

The court of appeals should remain the proper venue for review of final orders in tax appeal cases for many reasons. Keeping review authority with the court of appeals will result in receipt of finalized decisions quicker, provide consistency and uniformity and save taxpayers money. The turnaround time for an order from the court of appeals is consistently quicker than that of the district court. There is no logical reason for inserting yet another step in the appeal procedure, especially when there seems to be a united interest in keeping the tax appeal process moving so as to benefit all parties involved.

In the event this provision remains, the following amendment appearing as section (5) of subsection (c) of K.S.A. 74-2426, must be amended. This section would allow an appellant who chooses to appeal to district court to choose which district court to file in if their property is located in more than one county. Giving an option such as this may result in the unacceptable practice of forum shopping.

Sec. 3, pg. 5 - Removal of Members

Section 3 provides, in part, that a member of the board of tax appeals and chief hearing officer may be removed for cause by filing a petition in the district court of Shawnee County. This provision is problematic in that it does not define *who* may file said petition. Ultimately, as written, any individual has standing to file a petition for removal of a board member. It is easy to see how allowing such free-for-all could result in every disgruntled taxpayer flooding the Shawnee County District Court with petitions begging for the removal of board member. This action should be left to the District Attorney, Attorney General, or remain with the Governor as is it does for other boards for which the governor appoints members. *See* K.S.A. 58-4104 regarding the establishment of the Real Estate Appraisal Board.

For all of the reasons stated herein, Shawnee County respectfully requests that this bill be quashed.

Sincerely,

Rich Eckert
Shawnee County Counselor

Ashley Heidrick
Assistant County Counselor

JOHNSON COUNTY
KANSAS

February 19, 2014

Chairman Richard Carlson
House Taxation Committee
State Capitol, Room 582-N
Topeka, KS 66612

RE: House Bill 2614

Dear Chairman Carlson and Members of the Committee,

I am the Johnson County Appraiser and I am opposed to many sections in HB 2614.

1. Biennial revaluation process

For the past 25 years, real property has been valued annually as of January 1. Johnson County has been able to meet annual valuation successfully and to process all appeals at the local level within the statutory time limits. In 1992, the legislature responded to the complaint that BOTA was not issuing orders in a timely manner by amending K.S.A. 79-1460 to alleviate that problem. K.S.A. 79-1460 was amended to require that if a value is reduced, it must be maintained in the next tax year absent a compelling reason to change the value. HB 2614 is responding to the same complaint with COTA cannot issue orders timely by changing from annual valuations to biennial valuations. Whether biennial valuations solves COTA's tardiness is debatable; but, it will cause much greater issues than the failure to issue a timely order.

BIENNIAL VALUATIONS CAUSE INEQUITY IN MOVING MARKETS

Over the past several years, the market has been dynamic. The chart below illustrates the percentages of change for residential and commercial real property by increase, decrease or no change in value from 2007 through 2013. During a portion of this period, the real estate market was in decline. Under a biennial valuation system, many taxpayers would be overpaying taxes in the second year.

Compares October values and the new NOAV February Values the following year

	Residential			Commercial		
Year	% Increase	% Decrease	No Change	% Increase	% Decrease	No Change
2007	79%	2%	20%	66%	34%	
2008	44%	40%	16%	42%	58%	
2009	7%	70%	23%	15%	85%	
2010	7%	69%	24%	4%	87%	9%
2011	19%	57%	24%	49%	40%	12%
2012	10%	70%	20%	60%	31%	9%
2013	44%	49%	7%	52%	35%	13%

House Taxation
Date: 2/20/14
Attachment. 1 of 9

County Appraiser's Office
(913) 715-9000 office
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Olathe, Kansas 66061

In an upward market, as is now being experience as the recession has ended, there is another problem. Under a biennial valuation, taxpayers will experience a much larger increase in value the third year; whereas, under annual valuation, the increase comes in incremental steps. A biennial valuation makes it more difficult for a taxpayer to plan for the payment of taxes in the third year. It makes it more difficult for banks to determine escrow accounts for the payment of taxes in the third year.

A biennial valuation will cause many more unhappy taxpayers than happy taxpayers. You only need to look at the experience in Jackson County, Missouri where valuations are not done on an annual basis. Taxpayers were extremely shocked by the re-valuation because of the increase in values resulted in unanticipated higher taxes.

Taxpayers also will be outraged in a declining market. It will be perceived as the government picking their pockets. Neither scenario results in a good public image for the county appraisers, for the county boards of commissioners and for state elected officials.

Below is a chart that shows the total number of valuation appeals for both residential and commercial real property over the past seven years. The number of appeals has declined over all. The confidence level in the annual valuations by taxpayers is reflected in the decline of appeals. Taxpayers in general understand annual real estate market trends and accept valuations that are in step with those annual trends. It is much more difficult to forecast trends over a two year period.

The amount of appeals by year from the Notice of Appraised Value (NOAV) process is below. As one can see, the number of appeals has significantly dropped since 2007.

Residential and Commercial Appeal Recap

Year	Residential	Commercial	Total	%Change
2007	3,132	2,097	5,229	
2008	3,632	1,404	5,036	-3.7%
2009	3,816	1,913	5,729	13.8%
2010	2,372	1,616	3,988	-30.4%
2011	2,344	2,246	4,594	15.2%
2012	2,015	2,257	4,272	-7.0%

BIENNIAL VALUATIONS CREATES INEQUITIES BEYOND MARKET FLUCUATIONS.

Beyond the adverse effect biennial valuations will have on taxpayers in moving markets, there are practical problems with the institution of the biennial process that are not addressed in the bill:

1. How is new construction to be placed on the tax roll? Will it pay only on the value of the land from the prior year even though the improvement is completed on January 1 of the second year? Improvements significantly increase value over the underlying land value.

2. What if a building that is vacant on January 1 in year one, but is fully leased on January 1 of the second year? Does the owner get the benefit of the much lower value while the owner next door who had a fully occupied building for both years pays significantly more?

3. What if the assessment classification of the real property changes? In year one, the property is classified as agriculture and on January 1 of year two, a house has been built, sold and occupied?

9 – 2

Does the new homeowner pay on the agricultural land value while the homeowners around him pay based on a fully complete home?

4. What happens if the improvement was in existence on January 1 of the first year, but is destroyed by a fire prior to January 1 of the second year?

5. Is it intended that the biennial valuation cover all real property? What about state assessed utilities?

All of the above situations, including the situation of moving markets, create inequity in a biennial valuation. Taxpayers want confidence that the tax system is fair and equitable. No one wants his neighbor to pay significantly less for any reason. The taxpayer wants his neighbor to pay the same as he does. Taxpayers have that confidence in annual valuations.

The amount of appeals by year from the Notice of Appraised Value (NOAV) process is below. As one can see, the number of appeals has significantly dropped since 2007.

Residential and Commercial Appeal Recap

Year	Residential	Commercial	Total	%Change
2007	3,132	2,097	5,229	
2008	3,632	1,404	5,036	-3.7%
2009	3,816	1,913	5,729	13.8%
2010	2,372	1,616	3,988	-30.4%
2011	2,344	2,246	4,594	15.2%
2012	2,015	2,257	4,272	-7.0%
2013	1,920	1,689	3,609	-15.5%

The table below reflects what can be accomplished at the local level for residential and commercial properties during the appeal process. We continue to try and resolve the cases at the local level.

Residential Appeals and Percentage changed

Year	Total appeals	Changed	Percentage changed
2007	3132	1144	37
2008	3632	1610	45
2009	3816	1751	47
2010	2372	1173	50
2011	2338	1296	56
2012	2024	1172	58
2013	1920	1015	53

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Commercial Appeals and Percentage changed

Year	Total appeals	Changed	Percentage changed
2007	2097	684	33
2008	1404	362	26
2009	1913	660	35
2010	1616	366	23
2011	2246	525	23
2012	2418	819	34
2013	1689	377	22

We oppose the biennial revaluation concept.

2. Acceptance of the fee appraiser's appraisal

We do not believe this is good public policy and it is unconstitutional. Others will provide the legal premise for the unconstitutionality of the section.

Sec. 7. Amending K.S.A. 74-2438(c)

If a taxpayer presents a property-specific appraisal conducted by a certified general appraiser which determines the subject property's valuation to be less than that determined by a mass real estate appraisal conducted by the county or district appraiser, then the taxpayer's property-specific appraisal shall be accepted by the board.

I. Constitutional and Statutory Framework for Ad Valorem Valuations

A. Kan. Const., Art. 11, § 1: mandates that "legislature shall provide for a uniform and equal rate of assessment and taxation."

1. To have uniformity in taxation, it is necessary that similar properties be valued equally.

a. Equalization assures that each taxpayer who owns real property pays only his fair share of taxes

b. Mass appraisal is the only method to meet the constitutional requirement of "equal rate of assessment and taxation."

1) Mass appraisal values a universe of similar properties based on the factors listed in K.S.A. 79-503a.

2) The valuation is the fee simple interest defined in K.S.A. 79-102.

3) Statistical analysis of market data is used to derive a "fair market" value based on the common expectations of a group of potential buyers, not the expectations of the current owner/taxpayer or of a specific buyer.

3. Publication of decisions (page 5 line 19)

We believe this is a very good provision in the bill and support it.

4. Appellant choses district or court of appeals. (page 3 line 6)

The legislature in the past moved the process from the district court to the court of appeals. Both sides at that time thought it would be the most efficient and effective way to bring a speedy end to the valuation cases. We do not support this change since this would delay final resolution of the case for both parties.

9-4

Court of Tax Appeals (COTA)

From 2005 through 2012, the average of files closed is 611

Year	Dismissed	Stipulated	COTA Trials	COTA Trial Results	
				Sustained	Reduced
2005	88	204	5	2	3
2006	141	399	6	4	2
2007	344	325	17	3	14
2008	178	273	5	4	1
2009	214	260	18	11	8
2010	257	256	3	3	
2011	478	440	17	7	10
2012	423	454	51	32	19
2013	144	114	5	2	3

Court of Appeals

Year	Johnson County Cases
2000	1
2001	1
2002	1
2003	0
2004	0
2005	0
2006	0
2007	1
2008	4
2009	1
2010	0
2011	3
2012	13
2013	0

14 of the 16 Appeals are pending, are for subject matter jurisdiction

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5. **Signing of appeal with or without a valid signatures will be docketed (page 7 line 8)**

I think there should be a valid signature on the appeal. If no one signs the form, who does the court send the notice to? Can then anyone appeal a case with or without the owner's consent? If this is a legal proceeding, the court should know who to communicate with. Also who can sign the forms to small claims and regular division should be written in statute. Please make provisions for owner's immediate family not requiring a declaration of representation form.

6. **Income and expense burden of proof changes (page 8 line 10 through 19 & page 12 line 38)**

In the past session, this was the compromise to get the income and expense to the county appraiser as soon as possible at the hearing or immediately afterwards. The thought was the burden of proof was the incentive to get the information to the county appraiser as soon as possible. This compromise was to have the county appraiser with the proper information estimate a different value and change the value as necessary without going to the appeal process. I believe this legislation is not in the best interest for the property owner or the county in trying to resolve the cases. This issue has been around for a long time and it was reviewed by the legislative post audit.

Below is the recommendation from the legislative post audit division:

November 2002 Valuing Commercial Buildings for Property Tax Purposes: Determining Whether Current Procedures Ensure Accurate Appraisals at Fair Market Value

"To enable county appraisers to develop more accurate and meaningful models for valuing commercial property via the income approach, the Division should propose amendments to State law that will allow county appraisers to levy penalties against property owners or businesses that fail to provide requested income and expense information. Among other things, the Division should consider the International Association of Assessing Officers' suggestion to limit a building owner's right to use actual income and expense income during an appeal if that information wasn't submitted to the county when requested."

7. **USPAP issue effective date must be in the statute.**

We would recommend a more recent date for the USPAP version. 2012-2013. 2014 is already out and we have already completed our valuation for 2014 prior to the statute change.

8. **Small claims division from $2,000,000 to $5,000,000.**

I am not in favor of increasing the values for commercial properties. The purpose of the small claims division was to allow a process for all residential and lesser value commercial properties to have a hearing in a limited time without the attorneys involved in the process. With more complex properties there are other issues that need to be dealt with. Also, if I read the bill correctly, the county may not have the income and expense information before the small claims hearing. The county appraiser's designee should not have to try to analyze the income and expense information provided in a very limited time frame at a hearing. The limited time for both parties would be difficult to properly analyze.

9-6

Other suggestions for the bill to improve the processes

1. Small claims hearing officers are contracted individuals and not board's attorneys
2. Separate the residential properties with a hearing officer of one for the board to issue an order
3. Exemption applications for governmental jurisdictions to be completed at the local level with oversight by a state agency
4. Legislature define the documents that a representative can sign.

9 - 7

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RILEY COUNTY

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February 17, 2014

Chairman Richard Carlson
House Taxation Committee
State Capitol, Room 582-N
Topeka, KS 66612

Re: H.B.2614

Dear Chairman Carlson and Members of the Committee:

I am the Riley County Appraiser and legislative spokesperson for the Kansas County Appraisers Association. On behalf of the Kansas County Appraisers Association, I oppose H.B. 2614.

There are several problems with the bill's language that I believe will ultimately create inequities in property valuations. The first is the bill's expansion of Small Claims to include properties with values up to $5,000,000. The Small Claims Division works very well for homes, smaller value commercial properties, etc. It was not designed to provide adequate time or expertise for more complex, larger value properties. The 20 minutes allotted for Small Claims hearings would not do either party justice in their efforts to present their case. In addition, Small Claims officers are not adequately qualified for valuation decisions of higher value, more complex properties. Decisions made by less qualified hearing officers in hearings with severe time restraints will inevitably lead to inequitable decisions for property owners and counties.

The second problem area in HB 2614 is the bill's requirement that county appraisers adopt fee appraisals as a property's valuation when fee appraisals are provided by the property owner. County appraisers welcome any & all valuation evidence presented by property owners, including fee appraisals. However, not all fee appraisals are valid or appropriate for our purposes. As examples:

- Fee appraisals can be made for many different scopes & purposes. Appraisals can be made for re-financing, sales listings, estate settlements, property exchanges, partnership buy-outs, mergers, etc. The values described in those types of appraisals can vary greatly and could result in inaccurate valuations, detrimental to either or both parties.
- Date of appraisal is extremely important. County values have an effective date of appraisal of January 1st each year. This bill would allow appraisals that are many years old, which could result in inaccurate, inequitable values that are too low or too high.
- Many commercial appraisals are made for leased fee purposes instead of fee simple. This means the appraisal is likely based on the business interest instead of the real estate. County appraisers are required to appraise properties on a fee simple basis. Using appraisals that are less than fee simple could result in highly inaccurate valuations.
- Quite frequently we've found two fee appraisals done for the same property within the same general time frame, sometimes done by the same fee appraiser. One done for purposes of a property tax valuation appeal and one done for financing purposes, with two drastically different values.

A third problem with the bill is reversal of last year's amendments to section 4(h). This committee passed language last year that was eventually signed into law which required complete income & expense statements for leased commercial & industrial properties be provided to the county within 30 days of the informal hearing. This was an extremely important step towards reducing the length of time it takes for cases to be heard at COTA. Reversing last year's amendments will only mean more time and costs for counties and taxpayers.

The fourth problem with this bill is the apparent elimination of any signature requirement for appeals forms. It seems logical that a property owner would want to be aware of the COTA proceedings for his or her case. A signature is needed for purposes of notifications from COTA and/or either of the parties involved. We would rather see a simple list of who can or cannot sign the appeal forms.

We do support the amendments to section 3(d) which would publish COTA decisions within 30 days of their rulings, along with monthly reports of their appeals schedules. This could benefit property owners, counties, representing attorneys, the general public, and the legislature. While we support that provision, HB 2614 is otherwise unnecessary and it presents many problems for counties and property owners alike. Please do not pass to the House floor H.B. 2614.

Sincerely,

Greg McHenry
Riley County Appraiser

cc: Board of Riley County Commissioners
Senator Tom Hawk
Representative Sydney Carlin
Representative Vern Swanson
Representative Tom Phillips
Representative Ron Highland

Wyandotte County Appraiser's Office

Eugene (Gene) Bryan, Jr., RMA, CKA
County Appraiser

TESTIMONY

Concerning House Bill 2614
Re: Biennial revaluation, Changing COTA back to BOTA & misc. ad valorem valuation changes
February 20, 2014

Chairman Carlson and members of the committee, I am currently the appraisal manager for the Unified Government of Wyandotte County, Kansas City, Kansas, more commonly known as the Wyandotte County Appraiser. I appear before you today as the Wyandotte County Appraiser **in opposition to most provisions of this bill.**

I have been a practicing appraiser in the ad valorem field for over 42 years. For most of that time I have served as a County Appraiser and public official charged with implementing the ad valorem statutes found in chapter 79 of our Kansas statutes. Since 1989, using statutes this Legislature enacted, the county appraisers of this state, along with PVD, have worked to create a system of annual valuation of real property that I believe to be one of the best in the country. The counties and the State of Kansas have invested tens of millions of dollars in creating the mechanisms for annually valuing property and this investment should not be diminished by moving to a biennial revaluation cycle.

While the current system of annual valuations does pose challenges to us in 'getting our work done' in the time frame currently outlined by statute, I can see no advantage to a biennial system. In fact the disadvantages are:

1) Little, if any, cost savings as the same number of staff will be needed for the 'reval' year as we now have. Biennial revals do not give you two years to do the valuation work that we already have the capability of doing in one.
2) Revals cannot accommodate changes in market conditions/values in the non-reval year. As recent experience shows us, if values go down in the non-reval year, the values set in the reval year still apply. While this is also true if values are going up, this leads to significantly higher value increases when the next reval is done, which also leads to angry citizens and higher than normal appeal rates.
3) Personal property, which is fast approaching a point where it is not cost effective to continue taxing it (other than oil and gas properties), will become more difficult to administer and track the deletions to commercial accounts that remain on the rolls. New additions (non-CIME personal property) I feel will also be harder to locate and tax.
4) New additions and/or construction must be valued in the non-reval year and the only way to do so, and remain consistent with values established in the reval year, will be to keep the CAMA system's models and cost information from changing until after the appeal period in the non-reval year is over. This would not give the county any additional time to get ready for the reval year valuation process. In fact, this keeps you right where we are now.

Section 2: If orders are not rendered within 120 days by the ~~court~~ *board*, and that period has not been waived by the parties or if there is no "good cause" for the delay, shall have the filing fee refunded. This is perhaps one provision that I would not be opposed to.

Section 2(4): District courts should not be placed back in the appeal decision review process. Nor should a taxpayer be allowed to 'shop around' for a sympathetic court if they have property in more than one county. This could lead to inequities between counties and no guarantee that cases would be resolved any quicker than they currently are. District courts were removed some years ago from the appeals process with the current system of appealing COTA decisions directly to the Court of Appeals. This process seems to be working fine so we should leave it alone.

Section 3(b): The filing of a simple petition with the district court of Shawnee county should NOT be sufficient grounds for removing any ~~judge~~ *member*. The current system of conducting a public hearing and removal by the governor should be retained.

Section 3(d): Publishing decisions and a monthly report and making it available to the public and to the legislature is a good thing.

Section 3(e): Testing should be based on classes taken in-person and from a licensed provider. Education and testing should also be required for any hearing officers allowed for by current law or this bill, especially if the current $2,000,000 limit for appealing to Small Claims is increased to $5,000,000, which will bring more commercial properties into the Small Claims process.

Section 4 (b): Allowing the value threshold to increase to $5,000,000 will likely mean a lot more properties will avail themselves of the Small Claims process. As indicated above, there must be educational requirements established for small claims hearing officers and care must be taken to not create the same docketing, scheduling and decision problems we now have with COTA and the Small Claims level. Some $5,000,000 property valuation issues can be complex and to expect an untrained person to render fair decisions within 30 days, when they cannot retain documents provided by either party at the hearing, seems to be unrealistic.

Section 4(e): This comment is simply to express that I do not understand why an unsigned appeal form can be accepted and will not be grounds for dismissal of the appeal. We have had tax reps file appeals on behalf of taxpayers, who had no knowledge of the appeal even being filed. This should not be allowed to happen. Notices of appeal currently are supposed to be filed with the "appropriate unit of government". This rarely happens and places a burden on the county staff to prepare for these cases with less notice than we are supposed to get. With possibly many more cases going to Small Claims, there should be a provision placing the burden of proof on the taxpayer if they fail to notify the "appropriate unit of government" of the appeal being filed.

Section 4(h): The burden of proof on leased commercial and industrial property issue, in particular the 30 day income & expense (I&E) requirement, was addressed and decided by the legislature in the 2013 session. That language should be allowed to stand. It should not be changed to a 'no deadline' and '*in a format acceptable to the board*' provision that again places the county in an unfair position. The proposed language would allow the taxpayer to provide I&E information literally days before the Small Claims hearing and in a format that may not even be usable. However, if the Small Claims hearing officer accepts the format provided by the taxpayer, the County would have to seriously consider appealing on to the regular division. This again places a burden on the appeal level that we should be focusing more on.

Section 6(e): Subsection 1, 2, 3 and 4 seem to be related to several cases currently before COTA involving a certain tax attorney and tax rep. If BOTA will not be able to 1) determine who signs appeals, 2) who can represent taxpayers, 3) determine what constitutes the unauthorized practice of law, or 4) determine whether contingent fee agreements are a violation of public policy, then who will? I believe that there are issues here that are best left to the COTA as it is currently established by statute to decide.

Section 6(f): There should be some reference to not impeding <u>lawful</u> agreements or settlements that the county may try to enter into. It should not be left open for "*any sort of settlement or agreement*". It might also be wise to include some provision as to what the county must provide if the settlement or agreement is at a value other than the county's "fair market value", which the Supreme Court has opined is something the county can do. However, the Court also injected their thoughts as to just what the county could consider in arriving at a settlement. It should also make clear that any settlement or agreement can only be for any tax year under appeal to COTA.

Section 7(c) (1) top of page 10: This provision is extremely prejudicial to the interest of the county, who must defend their appraisals and represents the interests of every taxpayer. Appraisals are nothing more than opinions by two appraisers. To automatically determine, by statute, that one appraisal will <u>always</u> be 'better than' the other, just because one is done by a general certified appraiser, is ludicrous and unfair. There are a

number of counties who have general certified appraisers on their staffs who should be offended at this language and counties should be quite concerned if they will not even have the opportunity to impeach the taxpayer's appraisal or the appraiser and will lose the case even before a trial.

Section 10(1): Removal of the reference to the 1992 USPAP version is probably past due but there should be a date to replace 1992 and not left 'wide open'.

Section 82: The COTA is currently authorized to grant ad valorem tax exemptions and abate unpaid taxes on certain property. However, there are numerous exceptions, as outlined in 79-213 (l), where exemption for certain property is automatic and can simply be implemented by the County Appraiser. I have heard it suggested that these exceptions could be expanded to include property that is very rarely denied exemption and that the County Appraiser could be in the best position to make those decisions. If an exemption is denied by the County Appraiser, the applicant could appeal to COTA in those, hopefully few, situations. This could further reduce the work load presently on the Court.

All Sections: Changing Court to Board: The 2008 Kansas Legislature (substitute for HB 2018) adopted changes that created the current Court Of Tax Appeals (COTA) and abolished the BOTA as we knew it. Now after only 5 years we want to change it back? What was it about HB 2018, and the testimony given then, that convinced that legislature to change well over 40 years of having a BOTA? What went so wrong that we now have to go back to what we had AND we have to include certain things that BOTA cannot do? I'm sure you will want to know the answers to those questions but essentially I feel that this bill is unnecessary, except for the dealing with the educational, publication of decisions and exemption issues mentioned previously. This bill should not be passed out of committee.

I thank you for your time.

Sincerely,

Eugene (Gene) Bryan, Jr. RMA, CKA
Wyandotte County Appraiser

Cc: Unified Government Commissioners
Senator Pettey
Representative Dove
Representative Henderson
Representative Ruiz
Representative Wolf-Moore
Senator Haley
Representative Burroughs
Representative Frownfelter
Representative Peterson
Representative Winn

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR SENATE BILL NO. 231

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 231, as amended, would make a number of changes in the power, duties, and functions of the State Court of Tax Appeals (COTA), especially with regard to property tax valuation appeals; rename that body the State Board of Tax Appeals (BOTA); make several changes with respect to how property may be valued for taxation purposes; and lower the interest rate on delinquent property taxes.

Changes in COTA/BOTA Procedures

A requirement under current law that final orders regarding property tax cases be rendered in writing and served within 120 days after matters have been finally submitted would be replaced with a provision requiring a written summary decision be rendered and served within 14 days. Extensions from this deadline could continue to be granted pursuant to the written consent of all parties or for good cause shown. Aggrieved parties, within 14 days of having received the summary decisions, could request a full and complete BOTA opinion within 90 days. Failure of BOTA to comply with the 14-day or 90-day requirements, absent agreement by the parties or good cause shown, would result in all filing fees being returned to the taxpayer.

Aggrieved persons would have the right to appeal final orders of COTA issued after May 2, 2012, as well as other matters pending as of July 1, 2014, to the Kansas Court of Appeals or to a district court. (Current law requires the appeal

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

be made to the Court of Appeals.) Any appeal made to a district court would be a *de novo* trial. All such appeals to district courts would be conducted by the court with jurisdiction in which the property is located; or, if the property in question is located in multiple counties, the appellants would have the option of choosing which district court would hear the appeal. A current requirement that bonds be given of up to 125 percent of taxes assessed when reviews of property tax cases are being sought would be repealed.

A new provision would stipulate that one member of BOTA be a licensed and certified general real property appraiser. Additional language would limit to 90 days after the expiration of members' terms the maximum amount of time they could continue to serve.

A current requirement that those appeals decided by COTA (BOTA) deemed to be "of sufficient importance" be published would be replaced with a new mandate that all appeals be made available to the public and published on the body's website within 30 days. A monthly report on all appeals decided, as well as all of those that have not yet been decided and are beyond the new statutory deadlines, would be required to be made available to the public and transmitted to all 165 members of the Kansas Legislature.

An additional provision would declare it legislative intent that all proceedings in front of BOTA be conducted in a fair and impartial manner, and that all taxpayers be entitled to a neutral interpretation of state tax laws. BOTA would be prohibited from deciding cases based upon arguments concerning the shifting of tax burdens or upon revenue losses or gains.

Relative to the cases in the small claims division, the chief hearing officer would be prohibited from appointing any persons employed by BOTA as hearing officers. The maximum amount of appraised valuation above which cases could not be considered in the small claims division would be increased from $2 million to $3 million. Additional language

would clarify that notices of appeal to the small claims division could be signed by either taxpayers or their authorized representatives.

In cases involving leased commercial and industrial property, taxpayers would bear the burden of proof unless they have furnished county appraisers with complete income and expense statements for the property, within 30 calendar days on forms regularly maintained by taxpayers in the ordinary course of business for the three years prior to the appeal year in question. Single-property appraisals involving leased commercial and industrial property submitted by taxpayers with an effective date of January 1 would be deemed to return the burden of proof to county appraisers.

The salaries of members and the chief hearing officer who are newly appointed after June 30, 2014, would be set at the same amounts paid to administrative law judges until such time as the continuing education requirements have been met, at which point the salaries would be $2,465 less per year than amounts paid to a Chief Judge of the district court. (The current COTA Chief Judge receives the salary equal to a district court's Chief Judge; other COTA judges and the chief hearing officer receive salaries $2,465 per year below that level.)

Additional provisions would prohibit BOTA from determining who may sign appeals forms; who may represent taxpayers; deciding what constitutes the unauthorized practice of law; and deciding whether contingency fee agreements are a violation of public policy. BOTA further would be prohibited from impeding any agreement or settlement between a county and a taxpayer.

Relative to cases involving residential real estate and commercial and industrial real property, appraisals made by counties would be required to be released through the discovery process to taxpayers or their representatives. Taxpayers in such cases submitting single-property appraisals with an effective date of January 1 that have been

conducted by certified general real property appraisers and for which valuations are less than the amounts determined by the county mass appraisals would be entitled to have the qualifying single-property appraisals accepted into evidence at BOTA.

New language would stipulate that filing fees could no longer be charged to taxpayers who have filed appeals for a previous year that have not been decided under the new statutory time deadlines; to taxpayers filing in most cases involving single-family residential property; and for cases of not-for-profit organizations with property valued at less than $100,000. An additional provision would exempt municipalities and political subdivisions from all filing fees.

An existing statutory requirement that a request for reconsideration of final COTA orders be filed before seeking judicial review would be eliminated.

Property Tax Valuation System Changes

Another existing requirement that appraisals be performed in accordance with certain standards of the Appraisal Foundation in effect as of March 1, 1992, would be amended such that the specific date would be repealed, effectively requiring all appraisals to be performed prospectively in accordance with that Foundation's most current standards.

The bill would prohibit county appraisers from increasing the valuation for two years for certain real property that has had its value reduced by a final determination made pursuant to the valuation appeals process, unless substantial and compelling reasons have been documented by the appraisers. "Substantial and compelling reasons" would be defined generally to include a change in the use of the property, or to include situations involving substantial additions or improvements to the property. Additions or improvements defined as substantial would include expansions or enlargements of the physical occupancy of the

property or renovations that expand or enlarge the square footage of existing structures or improvements. Specifically excluded from the additions and improvements that could be considered substantial (and therefore be construed as a substantial and compelling reason to increase valuation) would be maintenance, renovation or repair of existing structures, equipment or improvements on that property that do not enlarge square footage, and reconstruction or replacement of existing equipment or components of any existing structures or improvements. (Current law prohibits county appraisers from increasing certain valuations that have been reduced for one year absent the determination of substantial and compelling reasons, which at present remain undefined statutorily.)

Delinquent Property Tax Interest Rate Change

The interest rate for delinquent property taxes also would be reduced by 2.0 percent. Current law sets the property tax delinquency rate at the rate otherwise determined statutorily by KSA 79-2968, plus 2.0 percent. The additional 2.0 percent would be eliminated by the bill, setting the property tax delinquency rate simply at the rate determined by that statute. (The property tax delinquency rate determined for tax year 2013, which was 6.0 percent, would have been 4.0 percent if this provision had been in effect for that tax year.)

Renaming

Many of the other statutes in the bill would simply replace numerous existing statutory references to COTA with BOTA.

Background

The original bill from 2013 would have expanded the Rural Opportunity Zone program to include an additional 23 counties, a provision that ultimately was enacted in another bill. The House Taxation Committee on March 13, 2014,

amended the bill to strike its original provisions, recommend that a substitute bill be created, and incorporate many of the provisions of Sub. for HB 2614 (with several new changes), and the provisions of HB 2754 (exempting municipalities from filing fees). The House Committee of the Whole on March 19, 2014, reduced from three to two years the proposed amount of time (compared to one year under current law) that county appraisers would have to wait before increasing the value of certain property absent substantial and compelling reasons.

Proponents of the original bill HB 2614, who included representatives of the Kansas Chamber, the Kansas Policy Institute, and the Kansas Association of Realtors, and attorneys who regularly practice before COTA, argued that COTA had initiated a "war" against tax consultants and attorneys in 2012; and taxpayers needed to receive more favorable treatment than they are afforded now when appealing property tax valuation issues. Several proponents also pointed to data indicating how property taxes had been increasing over time.

Opponents of the original HB 2614, who included representatives of COTA, the Kansas Association of Counties, and the Kansas County Appraisers' Association, noted the bill could trigger the development of a market for private fee appraisers who are willing to undervalue property; and also observed that the legislation raised a number of constitutional questions. Those questions included pending court cases on the unauthorized practice of law and whether the bill would involve a legislative "usurpation" of the Kansas Supreme Court's authority to regulate and define the practice of law; and whether removing the specific date relative to Appraisal Foundation standards would represent an unconstitutional delegation of legislative authority to a nongovernmental organization.

A fiscal note provided by the Department of Revenue stated a reduction in the delinquent interest rate would reduce its deterrent effect for late or nonpayment of property taxes and therefore also would have a negative impact on the 21.5

mills in state levies. A property tax model utilized by the Legislative Research Department indicates that, if an additional 1 percent of property taxes were to be delayed from one state fiscal year to the next (from the 97 percent that is received under current law to 96 percent) as a result of the delinquent interest rate reduction, receipts in FY 2015 from the 20 mills would decrease by an additional $5.9 million, and receipts from the 1.5 mills would decrease by $0.3 million.

The extension by an additional one year of the existing prohibition against county appraisers' increasing the valuation of certain property absent the determination of substantial and compelling reasons also would freeze certain values that would not remain frozen under current law, thereby further reducing statewide assessed valuation. A fiscal note on this change was not immediately available.

When the extension provision was contained in 2013 HB 2134, the Department of Revenue's fiscal note stated that, to the extent maintenance, renovation, repair, reconstruction, or replacement of existing property, improvements, and structures could no longer be factored into the fair market value determination of certain property pursuant to KSA 79-501, the language could be construed as violating the uniform and equal clause of the *Kansas Constitution.*

An updated fiscal note on proposed salary changes for COTA/BOTA under the substitute version of the bill, as well as other administrative cost issues, was not immediately available.

A fiscal note on HB 2754, the filing fee exemption for many governmental entities, indicated that COTA/BOTA would anticipate receiving $0.2 million less in fees annually.

Exhibit 4

XVI Kan. Op. Atty. Gen. 88 (Kan.A.G.), Kan. Atty. Gen. Op. No. 82-234, 1982 WL 187723

Office of the Attorney General

State of Kansas
Opinion No. 82-234
November 4, 1982

***1 Re: Kansas Constitution—Finance and Taxation—Uniform and Equal Rate of Assessment and Taxation**

Taxation—Property Exempt From Taxation—Property Constructed or Purchased in Part with Industrial Revenue Bond Proceeds

Synopsis: Based upon the Kansas Supreme Court's differentiation of 'permissible' and 'impermissible' partial exemptions, and the declaration of public purpose provided in K.S.A. 1981 Supp. 12–1740, it cannot be concluded, as a matter of law, that the portion of K.S.A. 1981 Supp. 79–201a, Second, (as amended by L. 1982, ch. 389, § 1), which grants a partial exemption from taxation to property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12–1740 to 12–1749, inclusive, and amendments thereto, is prohibited by Article 11, Section 1, of the Kansas Constitution. Cited herein: K.S.A. 1981 Supp. 12–1740, 12–3418, 79–201a, as amended by L. 1982, ch. 389, § 1, 79–3120a (now repealed), L. 1982, ch. 63, § 9, Kan. Const., Art. 11, § 1.

Honorable Homer E. Jarchow
Representative
Ninety-Fifth District
2121 West Douglas
Wichita, Kansas 67213

Dear Representative Jarchow:
You seek an opinion concerning the constitutional validity of the following two sentences of K.S.A. 1981 Supp. 79–201a, Second, (as amended by L. 1982, ch. 389, § 1):
'Any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12–1740 to 12–1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79–2301 et seq., and amendments thereto.' (Emphasis added.)

You question whether the above-quoted provisions violate Article 11, Section 1, of the Kansas Constitution, which, in part relevant to your inquiry, states: 'The legislature shall provide for a uniform and equal rate of assessment and taxation . . ..'

Under the statutory provisions quoted above, certain property is exempt from taxation to a limited extent. Thus, conversely, the same property is subject to taxation to a limited extent. The property is exempt from taxation only 'to the extent of the value of that portion of the property financed by the revenue bonds.' It follows, therefore, that the property is subject to taxation only to the extent of the value of that portion of the property which is not financed with the revenue bonds. Hence, under these provisions, the full value of certain property is not used as the basis of assessment for such property for purposes of property taxation.

***2** On two separate occasions within recent years, the Kansas Supreme Court has held that Article 11, Section 1, of the Kansas Constitution prohibits the legislature from prescribing that a value, other than the full fair market value, of farm machinery and equipment shall be used as the basis of assessment for such property for purposes of property taxation. See

State ex rel. Stephan v. Martin (Martin III), 230 Kan. 759 (1982), and State ex rel. Stephan v. Martin (Martin I), 227 Kan. 456 (1980). Accordingly, until the Court rendered its decision in Von Ruden v. Miller, 231 Kan. 1 (1982), we believed the Martin cases established that Article 11, Section 1, of the Kansas Constitution prohibits the granting of partial exemptions from property taxation.

However, in Von Ruden, the Court upheld the constitutionality of the property tax exemption granted in K.S.A. 1980 Supp. 79–3120a(c) (now repealed, see L. 1982, ch. 407, § 5, but see also L. 1982, ch. 63, § 9). This statute provided in part:
'The following shall be and are hereby exempt from taxes levied under the provisions of K.S.A. 1979 Supp. 79–3109, and amendments thereto, and from all other property or ad valorem taxes levied under the laws of the state of Kansas:
. . ..

'(c) money, notes and other evidences of debt, to the extent of the tax liability hereinafter provided, which is owned by a person who has a disability or was sixty (60) years of age or older on January 1 of the year in which an exemption is claimed hereunder. The exemption allowable under this subsection shall be in an amount equal to the lesser of the following: (1) The amount of the tax liability on the first three thousand dollars ($3,000) of gross earnings from said money, notes and other evidence of debt; or (2) the amount of the tax liability on the first three thousand dollars ($3,000) of gross earnings from said money, notes and other evidences of debt reduced by the amount that the owner's income exceeds twelve thousand five hundred dollars ($12,500), including in such owner's income the income of such person's spouse, in the year next preceding that in which the exemption is claimed under this subsection.' (Emphasis added.)

It is clear that these provisions grant a partial exemption from taxation for certain money, notes and other evidences of debt. However, the Court upheld the validity of these provisions, saying:
'It is reasonable to assume that persons in this category use the income generated by this property as a primary means of support. By exampting [a limited amount of] the income generated by intangibles owned by low income persons, more funds remain in their households and the amount of public assistance outlay is thereby reduced. Obviously, the statute serves a public purpose . . .. It is of note that this exemption differs from the provision reducing the assessed [appraised] value of certain farm machinery and equipment found unconstitutional in State ex rel. Stephan v. Martin, 227 Kan. 456, 608 P.2d 880 (1980). That provision did not exempt such property from taxation based on a purpose promoting the general welfare. Rather, it purposefully sought to alter the assessment rate of particular property for the purpose of benefiting a particular class of persons . . ..' (Emphasis added.) Id. at 14–15.

***3** In Martin I, supra, the Court spceifically found that 'the provision reducing the appraised valuation of certain farm machinery and equipment' was a partial exemption from taxation. See 227 Kan. at 467–468. Then, the Court said: 'In this respect [i.e., in granting a partial exemption], the law violates the requirements of art. 11, § 1 of the Kansas Constitution mandating uniformity and equality in the basis of assessment.' (Emphasis added.) Id. at 468.

Notwithstanding this clear and unambiguous statement of the Court in Martin, we must conclude from the above-quoted statements of the Court in Von Ruden, that it was not the fact that the provisions of K.S.A. 1979 Supp. 79–342 granted a partial exemption from taxation which rendered that law unconstitutional, but instead, the law was unconstitutional because the partial exemption was 'for the purpose of benefiting a particular class of persons,' and not for the 'purpose [of] promoting the general welfare.' Von Ruden, supra at 15.

Thus, notwithstanding the fact that the above-quoted provisions of K.S.A. 1981 Supp. 79–201a, Second, as amended, grant a partial exemption from taxation, we are constrained, under the statement made by the Court in Von Ruden, from concluding, as a matter of law, that these provisions are constitutionally prohibited merely because they prescribe a partial exemption from taxation.

However, the Supreme Court has consistently held that any statutory exemption of property from property taxation must 'have a public purpose and promote the general welfare.' See Von Ruden v. Miller, supra at 14; State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, Syl. ¶3 (1981); State, ex rel., v. Board of Regents, 167 Kan. 587, 596 (1949); and Sumner County v. Wellington, 66 Kan. 590, 593 (1903). The question, therefore, arises whether this statutory

exemption has a public purpose and promotes the general welfare. In regard to this issue, the Court has said: 'Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare.' Gunkle v. Killingsworth, 118 Kan. 154, 157 (1925). Accord, State ex rel. Tomasic v. Kansas City, Kansas Port Authority, supra at 412; and State, ex rel., v. Board of Regents, supra at 596.

In the recent case of State ex rel. Tomasic v. Kansas City, Kansas Port Authority, supra, the Supreme Court upheld the constitutionality of a statute which exempted property owned by a port authority from taxation. Moreover, the Court upheld the statute, even though it also provided that the exemption was to continue if the property was leased to a non-governmental entity. In upholding the validity of this tax exemption statute, the Court said:
'It cannot be seriously contended the port authority property or bonds will be 'used exculsively' for one of the constitutionally enumerated exemptions. Therefore, the exemption, if valid, must meet the criteria for statutory exemption. The legislature has declared an exemption because the 'exercise of the powers granted by this act will be in all respects for the benefit of the people of this state.' K.S.A. 1980 Supp. 12–3418. Certainly economic benefits flow from the powers vested in port authorities, and the court cannot say there is not public purpose and promotion of the general welfare in such benefit. The exemption is constitutionally valid.' (Emphasis added.) Id. at 412–413.

***4** Hence, it can be seen that the Court upheld the exemption because the 'Port Authority Act,' K.S.A. 1981 Supp. 12–3401 et seq., contained a legislative declaration that the act will promote the general welfare. Following this rationale of the Court, we note that the legislature has declared the purpose of the 'Industrial Revenue Bond Act,' K.S.A. 12–1740 to 12–1749, inclusive, as follows:
'It is the purpose of this act to promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development in the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business, industry and health development; and to promote the economic stability of the state . . ..' (Emphasis added.) K.S.A. 1981 Supp. 12–1740.

If it is 'certain' that 'economic benefits flow from the powers vested in port authorities' under the provisions of K.S.A. 1981 Supp. 12–3401 et seq., and, thus, the exemption provided in K.S.A. 1981 Supp. 12–3418 is constitutionally permissible, we cannot conclude, as a matter of law, that economic benefits do not also flow from the powers vested in cities and counties under the provisions of K.S.A. 1981 Supp. 12–1740 et seq. Moreover, just as the Court could not say 'there is not public purpose and promotion of the general welfare' which flow from the powers vested in port authorities, we cannot say there is not public purpose and promotion of the general welfare which flow from the powers vested in cities and counties under K.S.A. 1981 Supp. 12–1740 et seq.

Thus, we cannot conclude, as a matter of law, that the partial exemption from taxation granted to certain property under the above-quoted provisions of K.S.A. 1981 Supp. 79–201a, Second, as amended, is not 'based on a purpose promoting the general welfare,' and is granted merely 'for the purpose of benefiting a particular class of persons.' Von Ruden, supra at 15. Hence, based upon the Court's differentiation, in Von Ruden, of 'permissible' and 'impermissible' partial exemptions, and the declaration of public purpose provided in K.S.A. 1981 Supp. 12–1740, we cannot conclude, as a matter of law, that the portion of K.S.A. 1981 Supp. 79–201a, Second, as amended, which grants a partial exemption from taxation to property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12–1740 to 12–1749, inclusive, and amendments thereto, violates Article 11, Section 1, of the Kansas Constitution.

In concluding, we note that the distinction made in Von Ruden, supra, between 'permissible' and 'impermissible' partial exemptions represents a significant departure from prior interpretations of Article 11, Section 1 of our constitution, developed nearly from statehood, holding that this constitutional provision requires uniformity and equality in the burden of taxation. See Martin I, supra, and the cases cited therein at 461. While the total exemption of property from taxation does not disturb this principle, the partial exemption of property from taxation creates nonuniformity and inequality in the burden of taxation. Clearly, when property is subject to taxation, but such property is valued for purposes of taxation at less than its fair market value, such property is burdened by taxation to a lesser extent than property valued for purposes of taxation at fair market value. Such is the case here. Property constructed or purchased in part by industrial revenue bond proceeds is valued for taxation purposes at less than its fair market value. It is valued at its fair market value less the value of that portion of the

property financed by the revenue bonds. Thus, some of that property's tax burden is shifted to other property subject to taxation. However, until the Supreme Court clarifies or retracts its statement in Von Ruden, supra, we must conclude that Article 11, Section 1, of the Kansas Constitution permits the granting of partial exemptions from taxation, so long as the exemption is 'based on a purpose promoting the general welfare' and is not merely 'for the purpose of benefiting a particular class of persons.' Von Ruden, supra at 15.

Very truly yours,

***5** Robert T. Stephan
Attorney General of Kansas
Rodney J. Bieker
Assistant Attorney General

XVI Kan. Op. Atty. Gen. 88 (Kan.A.G.), Kan. Atty. Gen. Op. No. 82-234, 1982 WL 187723

XXV Kan. Op. Atty. Gen. 51 (Kan.A.G.), Kan. Atty. Gen. Op. No. 91-134, 1991 WL 576893

Office of the Attorney General

State of Kansas
Opinion No. 91–134
October 29, 1991

***1 Re: Taxation—Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property—Powers and Duties of Director of Property Valuation; Force and Effect of Directives**

Synopsis: The July 2, 1990 directive issued by the director of property valuation that requires county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value and use value for tax year 1991 is binding on all county appraisers. The "final result" is the value reached at the last step taken in the processes. In order to alter the value of property, the value of which was set in the 1989 or 1990 hearing and appeal process, the county appraiser must have documented substantial and compelling reasons to prove the altered value reflects current fair market or use value. Cited herein: K.S.A. 79–1401; 79–1404, as amended by L.1991, ch. 278, § 1; K.S.A. 79–1456; K.S.A.1990 Supp. 79–1476.

The Honorable Clyde D. Graeber
State Representative
Forty First District
2400 Kingman
Leavenworth, Kansas 66048–4230

Dear Representative Graeber:
By letter dated July 17, 1991, this office brought to your attention the existence of a directive issued by the director of property valuation to all county boards of equalization and all county appraisers. The directive, dated July 2, 1990, directs local officials to take into consideration the values reached through the previous years' appeals processes when estimating fair market value or use value for tax year 1991. You ask that we address this directive in a formal opinion, and that we respond to the following questions:

"1. Does the July 2, 1990, PVD Directive requiring 'due deference' to the final results of the 1989/1990 hearing and appeals process except where substantial and compelling reasons to deviate therefrom are demonstrated, apply not only to those values determined by the Board of Tax Appeals, but also to those values established at both the informal hearing and board of equalization levels of appeal?

"2. Absent substantial and compelling reasons to deviate therefrom, may a county increase the valuation when that property's value for the prior year had been determined at either the informal or the county board of equalization hearing levels?

"3. How is the phrase 'substantial and compelling reasons' defined and applied in the context of determining whether due deference shall be given to the final results of the hearing and appeals process in regard to the fair market value of property?"

The July 2, 1990 directive states in part:
"Except for land devoted to agricultural use and a few other exceptions, real property in Kansas is required to be valued at its 'fair market value,' which is defined in K.S.A. 79–503a as 'the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming the parties are acting without undue compulsion.' K.S.A. 79–503a further provides that sales shall not be used as the sole criteria of 'fair market value,' but that other factors shall be considered in finding 'fair market value.' Therefore, in my opinion, due deference should be given to the final results of the 1989/1990 hearing and appeals process in finding 'fair market value' or 'use value.' The presumption is that these final results represent the 'fair market value' or 'use value' of the property....

***2** "County appraisers are directed to carefully analyze the final results of the hearing and appeals processes for both tax years 1989 and 1990 in estimating 'fair market value' and 'use value' for tax year 1991. Only when substantial and compelling reasons to deviate from such 1989 and 1990 final values have been documented should such value be increased for tax year 1991."

The directive does not distinguish between results of a hearing before the board of tax appeals and results of an informal hearing with the county appraiser, or of an appeal at any other stage. The results at any stage will be considered "final" if not timely appealed further. Also, it is the goal at each stage to achieve fair market value (or use value for land devoted to an agricultural use), so the presumption is that at any of the stages the result, if final, represents fair market value or use value.

By your second question, you essentially ask whether county appraisers may ignore the directive or if it is binding on them. Several statutes give the director of property valuation the power to direct county and district appraisers. K.S.A. 79–1401 provides that "[t]he director of property valuation shall have general supervision and direction of the county assessor's in the performance of their duties and shall regulate and supervise the due performance thereof." (Emphasis added.) The director has the power and authority to exercise general supervision over county and district appraisers to the end of uniform assessments at fair market value; "to require all county and district appraisers ... under penalty of forfeiture and removal from office" to assess at fair market value; "[t]o confer with, advise and direct county and district appraisers ... as to their duties under the statutes of the state"; and "to make any order or direction to ... any county or district appraiser as to the valuation of any property...." K.S.A. 79–1404, as amended by L.1991, ch. 278, § 1 (emphasis added). K.S.A. 79–1456 requires county appraisers to "follow the policies, procedures and guidelines of the director of property valuation in the performance of the duties of the office of county appraiser." K.S.A. 79–1458 and 79–1404 First as amended, require county and district appraisers to maintain all data relating to appraisal of property as may be required by the director. In Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12 (1969), the Kansas Supreme Court stated:
"The director of property valuation is an administrative official and his decisions in all matters within the scope of his supervisory power, involving administrative judgment and discretion, are conclusive upon subordinate taxing officials. In the exercise of his powers, the director must of necessity interpret the tax laws and such interpretations are prima facie binding."

See also McManaman v. Board of County Commissioners, 205 Kan. 118, 126, 127 (1970).

Based on the above-cited authorities, it is our opinion that county and district appraisers are bound to follow a directive of the director of property valuation when the directive is issued to assist the appraisers in determining fair market or use value or performing any of their other duties. The July 2, 1990 directive in question specifically addresses determination of fair market or use value for properties which have gone through the hearing and/or appeals processes in 1989 or 1990. Further the directive mandates the maintenance of data by appraisers in that it requires them to document adjustments. Since these are areas within the director's scope of authority, we believe the directive in question is binding on county and district appraisers.

***3** Finally, you seek our interpretation of the phrase "substantial and compelling reasons" in the context of determining whether the final results of a previous year's hearing and appeals process may be altered by the county appraiser. We believe the intent of this language was to place on the county appraiser the burden of documenting and proving that the value assigned a piece of property through a prior year's hearing or appeals process is not its current fair market or use value. This interpretation takes into account the county appraiser's duty to update appraisals on an annual basis (K.S.A.1990 Supp. 79–1476), but at the same time requires the appraiser to account for any change in value. The reasons given for altering the value from that reached in the appeals process must be compelling; the presumption is that the values finally arrived at in the hearing and appeals processes were the fair market or use values in that those were the values agreed to be such by the taxpayer and the government officials charged with the responsibility of setting such values. However, if the appraiser can in specific instances prove by demonstrative evidence that fair market value was not achieved through the processes or that changes have occurred in the property or the market, the value can be altered. Such analysis and documentation must occur prior to issuance of a change of value notice, the point being that the appraiser should not be changing the value of such property without having demonstrable reasons for doing so.

In conclusion, the July 2, 1990 directive issued by the director of property valuation that requires county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value and use value for tax year 1991 is binding on all county appraisers. The "final result" is the value reached at the last step taken in

those processes. In order to alter the value of property, the value of which was set in the 1989 or 1990 hearing and appeal process, the county appraiser must have documented substantial and compelling reasons to prove the altered value reflects current fair market or use value.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas
Julene L. Miller
Deputy Attorney General

XXV Kan. Op. Atty. Gen. 51 (Kan.A.G.), Kan. Atty. Gen. Op. No. 91-134, 1991 WL 576893

XXIX Kan. Op. Atty. Gen. 28 (Kan.A.G.), Kan. Atty. Gen. Op. No. 95-71, 1995 WL 455731

Office of the Attorney General

State of Kansas
Opinion No. 95-71
July 24, 1995

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Duties of Appraiser Regarding Valuation Increase of Real Property; Deference to be Given Final Decision Reached in Prior Year's Appeal Process

Synopsis: In the taxable year immediately following a reduction in valuation by a final determination made by an arbitrator or through a hearing and appeal, K.S.A. 1994 Supp. 79-1460 requires the county appraiser to appraise the property at its fair market value and justify any increase in value with substantial and compelling reasons. Cited herein: K.S.A. 1994 Supp. 79-501; 79-503a; 79-1411b; K.S.A. 79-1412a; K.S.A. 1994 Supp. 79-1439; 79-1448; 79-1460; 79-1476; 79-1494.

***1** The Honorable Carol E. Beggs
State Representative, 71st District
P.O. Box 1222
Salina, Kansas 67402-1222

Dear Representative Beggs:
You request our opinion concerning the application of K.S.A. 1994 Supp. 79-1460. Your questions are as follows:
"1) What precedential value and deference must a county appraiser give to an arbitrator's decision from one year when establishing property value for subsequent years?

"2) What precedential value and deference must a county appraiser give to the result of a hearing and appeals process for one year when establishing property values for subsequent years?"

The duty to appraise the tangible property in each assessment district rests with the county appraiser. K.S.A. 1994 Supp. 79-1411b. See also Kansans for Fair Taxation v. Miller, 889 P.2d 154, 158 (Kan. Ct. App. 1995). The legislature has mandated that county appraisers perform this duty on an annual basis. K.S.A. 79-1412a; K.S.A. 1994 Supp. 79-1476. Generally, real property is to be appraised at its fair market value. K.S.A. 1994 Supp. 79-501; 79-1439.

The only statutory limitations on the duty of the county appraiser regarding the valuation of nonagricultural real property at fair market value are found in K.S.A. 1994 Supp. 79-1460. This statute provides that the county appraiser may not increase the valuation for real property unless:
"(a) The record of the latest physical inspection was reviewed by the county or district appraiser, and documentation exists to support such increase in valuation in compliance with the directives and specifications of the director of property valuation, and such record and documentation is available to the affected taxpayer; and (b) for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process, documented substantial and compelling reasons exist therefor and are provided by the county appraiser." K.S.A. 1994 Supp. 79-1460.

The interpretation of a statute begins with the language itself. "If the language of a statute is clear and unambiguous ... the plain meaning of the language is conclusive except in the rare case in which 'literal application of a statute will produce a result demonstrably at odds with the intention of the drafters.'" National Union Fire Insurance Co. v. Midland Bancor, 854 F. Supp. 782, 787 (D.C. Kan. 1994) citing United States v. Ron Pair Enterprises, 489 U.S. 235, 241-42 (1989). Because the application of the plain meaning of the language in K.S.A. 1994 Supp. 79-1460 would not result in a conclusion

demonstrably at odds with the intention of the drafters, the plain language of the statute is determinative of the questions that you pose.

***2** K.S.A. 1994 Supp. 79-1460 in no way interferes with the authority of the county appraiser to increase the valuation of real property within the assessment district if an increase is necessary to place the property valuation at fair market value. However, the statute places procedural restrictions on the exercise of that duty. Before increasing the valuation of real property, the county appraiser must review the record of the latest physical inspection of the property to determine if documentation exists to support the increase and make the record of this documentation available to the taxpayer. K.S.A. 1994 Supp. 79-1460(a). The determination as to the valuation of the property remains with the county appraiser and must be its fair market value as determined by K.S.A. 1994 Supp. 79-503a and guidelines established by the director of property valuation.

In the year immediately following a reduction in valuation as a result of a final determination made pursuant to a valuation appeal (whether by arbitration through K.S.A. 1994 Supp. 79-1494 or by hearing and appeal through K.S.A. 1994 Supp. 79-1448), the burden of proving the need for an increase in valuation falls on the county appraiser to demonstrate "substantial and compelling reasons" for the increase. Again, this language does not diminish the responsibility of the county appraiser to appraise the property at its fair market value, which may involve an increase. Rather, this provision places a higher burden on the appraiser in demonstrating the reasons for any increase. Furthermore, we note that, pursuant to K.S.A. 1994 Supp. 79-1460, this higher burden of proof only exists for the taxable year immediately following the year in which a valuation was reduced by a final determination made pursuant to the appeal process. In all years subsequent to the one following the appeal determination, the only restriction with respect to an increase in valuation is that the county appraiser must review the record of the latest physical inspection. [Language prohibiting the increase in valuation of property without conducting a new physical inspection was removed from the statute in 1994. L. 1994, ch. 275, § 1.]

In conclusion, while it may provide evidence of fair market value, there is no statutory requirement that precedential deference be given to a prior valuation determination made pursuant to an arbitrator's decision or a decision made after a hearing and appeal when determining property valuation in subsequent years. However, in the taxable year immediately following a reduction in valuation by a final determination made by an arbitrator or through a hearing and appeal, the county appraiser must document any increase in valuation with substantial and compelling reasons.
Very truly yours,

Carla J. Stovall
Attorney General of Kansas
Julene L. Miller
Deputy Attorney General

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