

Nick Jordan, Secretary
David N. Harper, Director

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MEMORANDUM

TO: All County Appraisers, County Clerks, County Commissioners, County Treasurers and County Registers of Deeds

FROM: Roger Hamm, Deputy Director, Division of Property Valuation

DATE: June 18, 2014

SUBJECT: 2014 Legislative Session – New Property Tax Related Laws

The 2014 Legislature made several changes to the property tax laws that have a varied effect upon our county offices. Below is a summary by topic, along with the appropriate bill number and section(s).

Summary

Appraisal:

Interim County Appraiser The board of county commissioners or governing body of any unified government may appoint an interim county appraiser. The appointment is subject to approval of the director of property valuation, for a period not to exceed six months to fill a vacancy in the office of county appraiser pending the appointment of an eligible county appraiser.

As amended, this bill clarifies that the county appraiser term shall end on June 30 of the fourth year after the commencement of the four year term. *House Bill 2057 § 1 amending K.S.A. 2013 Supp. 19-430.*

Extension of the Authority to the County Appraiser to Exempt Watershed Land The 2014 legislative session amended K.S.A. 79-213 to provide that with regard to a request for exemption for lands contiguous to a dam or reservoir (K.S.A. 79-201g) or farm reservoir (K.S.A. 82a-409), the county appraiser can grant the exemption without an order from the board of tax appeals as of July 1, 2014. If the county appraiser recommends that the exemption be granted, the county appraiser shall determine the amount of exemption to be granted and shall notify the county clerk who annually shall make an adjustment in the taxes levied against the real property as the owner is entitled.

The exemption begins with the tax year commencing after the issuance of the certificate of completion and during the years that the landowner is entitled to the exemption. *Senate Bill 266 § 4 amending K.S.A. 2013 Supp. 79-213.*

Budget:

Approval of Budget by Taxing Subdivision and Requirements Related to Property Value The 2014 legislative session required municipalities in preparing and approving budgets for the new year to not increase those budgets from the prior year without a majority vote and publication of such vote in official county newspapers, except at the published rate of inflation defined by the rate of the Consumer Price Index. Excluded from this bill are municipalities which receive \$1,000 or less in annual property tax receipts.

The bill also requires all other municipalities, in response to increases in total tangible property valuation, to reduce the amount of tax levied to the prior year's level, except for the following:

1. Inflation allowance;
2. Taxes levied on valuation added as a result of new construction;
3. Valuation added from property located within newly added jurisdictional territory;
4. Valuation added because property has changed in use;
5. Valuation added from certain increased personal property.

Also excluded from the computation are property taxes that have previously been approved by voters, taxes levied to pay principal and interest on bonds, and taxes collected pursuant to the 21.5 mills in state property tax levies.

Municipalities are defined as all political subdivision including counties, townships, municipal universities, school districts, community colleges, drainage districts and other taxing units. *House Bill 2047 § 1 amending K.S.A. 2013 Supp. 79-2925b.*

Valuation and Assessment:

Watercraft valuation and taxation The 2014 legislative session made several changes to the watercraft law passed in 2013 to be implemented January 1, 2014. Watercraft is now defined as any boat or vessel designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water. Each watercraft may include one trailer which is designed to launch, retrieve, transport and store such watercraft and any nonelectric motor or motors which are necessary to operate such watercraft on the water.

Other changes made that will apply to the 2014 tax year are as follows:

- The levy used to calculate the tax on watercraft shall be the county average tax rate from the prior tax year. Counties should have already received these levies for 2014.
- If a watercraft was exempt or could be exempt because the purchase price was \$750 or less, it is still considered exempt.
- If a watercraft was exempt or could be exempt because it was commercial and industrial machinery and equipment purchased after June 30, 2006, it is still considered exempt.

- Any boat that is designed to be propelled through the water through human power alone shall be exempt.

Language left unchanged by this year's session:

- The county appraiser will determine the fair market value, of each watercraft as of January first of each year. The following assessment rates will be applied to the appraised value to achieve the assessed value when calculating tax: 11.5% for tax year 2014 and 5% for tax year 2015 and all years after.
- Any calculated tax amount for watercraft of less than \$12 will not be less than \$12.

House Bill 2422 amending K.S.A. 2013 Supp. 79-5501

Reduction of Interest Rate on Delinquent Taxes Beginning in tax year 2015 and all years after, the delinquent tax interest rate is developed by only using the prescribed interest rate in K.S.A. 79-2968. The effect will be to reduce by 2 percent the interest rate the county collects when a taxpayer fails to pay his/her property tax by the December 20th and May 10th deadlines. *Senate Bill 231 § 13 amending K.S.A. 2013 Suppl. 79-2004, Senate Bill 231 § 14 amending K.S.A. 2013 Suppl. 79-200a4.*

Clarification of the Definition of Commercial and Industrial Machinery and Equipment, Appraisal of Complex Industrial Facilities, Appraisal of Facilities Built with IRB Funds The 2014 legislative session clarified the intent of the 2006 property tax exemption for certain commercial and industrial machinery and equipment by offering the determination of when this property could be classified as personal property or real property. County appraisers are required to conform to the definitions of real and personal property in Kansas law.

When the classification of property may not be clearly determined, appraisers are required to utilize a three-part, fixture-law test (involving the annexation, adaption and intention) in determining its classification as real or personal. The guidelines are set forth in the personal property guide prescribed by the director of property valuation. The basic factors for clarifying property as real or personal include designated use and purpose of the property with the understanding that all three parts of the three-part fixture test need to be satisfied for property to be classified as real property.

Another provision stipulated that after July 1, 2014, owners of property constructed or purchased with the proceeds of industrial revenue bonds (IRBs) and owners of property exempt from property tax by cities and counties for economic development (EDXs) purposes would be required to notify the county appraisers within 30 days of the completion of improvements on the projects, and the county appraiser would then be required to classify the improvements as real or personal property and notify the owners of the classification within 180 days. The county appraiser may request that the director of Property Valuation Division (PVD) of the Department of Revenue contract with an independent appraiser to determine the classification of the improvements described above. The county would be responsible for paying all reasonable costs of the independent appraisal to determine the classification.

The owner could appeal the classification to the Board of Tax Appeals (BOTA). Property classified in this process could not be reclassified within two years after the expiration of the exemption without approval of BOTA and the determination of a material physical change to the property, a material change in the use of the property, or a substantial change in directly applicable law.

Also listing the property at the time of the exemption for IRBs and EDXs does not constitute an official classification of the property for tax purposes.

A taxpayer or the county appraiser would be authorized to request that the director of the PVD contract with an independent appraiser to classify and appraise certain complex properties. The director of PVD would maintain the list of independent appraisers with qualifications defined in the new section of the law. The counties would be responsible for paying all reasonable costs of the independent appraisals, regardless of which party made the request. The director of PVD would be allowed to require county appraisers and taxpayers to submit relevant documentation to the independent appraisers.

Final determinations made by independent appraisers would be admissible before the courts and BOTA in any subsequent proceedings. *House Bill 2643 New § 1-7, House Bill 2643 § 8 amending K.S.A. 2013 Supp. 79-1609, House Bill 2643 § 9 amending K.S.A. 2013 Supp. 12-1744a, House Bill 2643 § 10 amending K.S.A. 2013 Supp. 79-251.*

Reclassifying Certain Machinery and Equipment Used in Manufacturing of Cement, Lime, etc. The 2014 legislative session listed commercial and industrial machinery and equipment used in the manufacturing of cement, lime and other similar products and specified that this machinery and equipment would be classified as person property for tax purposes.

The list in this legislation includes: kilns, pumps, lifts, process fans, bucket elevators, compressors, raw mills, hammer mills, grinders, conveyors, ball mills, mixers, storage tanks, scales, crushers, reclaimers, processing vessels, filters, electric motors, cements and clinker coolers, finish mills, separators, electric hoists, stackers, roller mills, clinker breakers, hydraulic and lubricating systems, analyzers, aeration systems, air pollution control equipment, bulk loading systems, material and gas flow distribution gates and handling and transport systems.

This section of the bill goes into effect retroactively to December 31, 2013. *House Bill 2643 New § 11.*

Taxes Due on Abandoned or Repossessed Personal Property A bill to address the concerns of manufactured home park owners was passed in the 2014 legislative session. This bill gives tax relief to real property owners with personal property which had been abandoned or repossessed on the real property.

After July 1, 2014 the owner or lessee of any real property on which abandoned or repossessed personal property is located after it has been assessed but before the taxes are paid will not be liable for the unpaid taxes when lawful title is acquired or the legal proceedings to effect repossession commenced within 12 months of the property being abandoned or repossessed. *House Bill 2057 New § 2.*

Tax Liens on Transferred Personal Property The 2014 legislative session clarified the procedures for the collection of taxes on sold or transferred personal property (such as personal watercraft but may apply to other personal property). The bill states that the lien for taxes assessed but not paid on personal property which is being sold or transferred will be attached to the property and will not be a personal debt of the purchaser and that the lien is only for the amount equal to the tax assessment for the year in which the sale or transfer is made and for no previous years.

Also any unpaid taxes on the personal property for any years prior to the sale or transfer will remain as personal debts of the seller and such taxes must be levied against the seller for the purposes of vehicle registration through other existing statutory collection methods.

This bill goes into effect January 1, 2015. *House Bill 2057 § 5 amending K.S.A. 79-2109.*

Tax Refunds:

Destroyed or Substantially Destroyed Homestead Tax Abatement or Tax Credit This is another law that was passed in the 2013 session and amended in the 2014 session. A full review of K.S.A. 2013 Supp. 79-1613 as amended follows.

The owner of any taxable homestead which is destroyed or substantially destroyed due to an earthquake, flood, tornado, fire, or storm, **or** any other destructive event which the Kansas governor has declared a disaster may make application to the board of county commissioners for the abatement of property taxes levied or a credit against property taxes during any or all of the next three (3) years.

“Destroyed or substantially destroyed” means damage sustained by a homestead by the above mentioned natural occurrences **or** for which the Kansas governor has declared a disaster *and* the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

“Homestead” means the dwelling, owned or rented, which is occupied as a residence and the home site land. Homestead may also consist of multi-family dwellings, multi-purpose building or manufactured or mobile homes including the land which they are situated.

If the homestead was destroyed or substantially destroyed after January 1 but prior to August 15, the owner may make application for relief to the county commissioners for the granting of an *abatement* of the property tax levied. If property taxes have been paid or partially paid, the owner may make application for the granting of a credit against property taxes payable during any or all of the next succeeding three (3) taxable years.

If the homestead was destroyed or substantially destroyed on or after August 15 through the end of that year, application for relief may be made to the county commissioners for the granting of a *credit* against property taxes payable during any or all of the next succeeding three (3) taxable years.

Subject to budgetary restraints of the county or taxing subdivision arising from the declared disaster, the county commissioners shall inquire into and make findings regarding, among other things:

- Whether the property is a homestead as defined by this act
- Whether the homestead was destroyed or substantially destroyed as defined by this act and
- The assessed valuation of the homestead

If it is determined that the owner is entitled to an abatement of all or any portion of the taxes levied or is entitled to a credit against property taxes payable by the owner during any or all of the next succeeding three (3) taxable years, the county commissioners may so order.

The county clerk and county treasurer shall in each case of abatement or credit correct their records in accordance with the county commissioner's order. The county clerk shall notify the governing body of any taxing district affected by the county commissioner's order.

The provisions of this section shall be applicable to all taxable years after December 31, 2011. *House Bill 2057 § 3 amending K.S.A. 2013 Supp. 79-1613.*

Exemptions:

Extending the Motor Vehicle Tax Exemption to Additional Members of the Military The 2014 legislative session added the motor vehicle tax exemption of two vehicles, which would be taxed under K.S.A. 79-5101, for any full-time member of the military service of the United States who is stationed in Kansas, or any full-time active guard and reservist member of the Kansas army or air national guard, or a Kansas unit of the reserve forces of the United States under authority of title 10 or title 32 of the U.S. Code and is stationed or assigned in Kansas.

This bill is effective after December 31, 2013. If a member of the military described above has already paid the motor vehicle tax, the county treasurer is to issue a refund of the taxes paid. *House Bill 2643 § 12 amending K.S.A. 2013 Supp. 79-5107.*

Exemption of Amateur-Built Aircraft The 2014 legislative session added amateur built aircraft used exclusively for recreational or display purposes to the legislation that exempted antique aircraft.

Amateur-built aircraft is defined as aircraft, manned or unmanned, that the major portion of which has been fabricated and assembled by a person or persons who undertook the construction project solely for their own education or recreation. This bill applies to all taxable years after December 31, 2013. *Senate Bill 266 § 5 amending K.S.A. 79-220.*

Exemption of Utility Systems and Appurtenances Located on Military Installation The 2014 legislative session added exemption twenty-five to K.S.A. 79-201a. This exempts all utility systems and accessories located on U.S. department of defense military installations located in Kansas as of December 31, 2013 which were acquired pursuant to the military utilities privatization initiative 10 U.S.C § 2688 *et seq.*, or which have been installed after December 31, 2013 and which are provided exclusively or primarily for use by the military of the U.S. *House Bill 2455 § 1 amending K.S.A. 2013 Supp. 79-201a.*

COTA and the Appeal Process:

Abolishing COTA and Reestablishing BOTA, as well as Other Changes in the Appeal Process

The 2014 legislative session requires that the Court of Tax Appeals (COTA), now renamed the Board of Tax Appeals (BOTA), render and serve a written summary decision on property tax cases within 14 days where previously final orders had to be rendered in writing and served within 120 days after the matter had been fully submitted to BOTA.

Within 14 days of receiving the summary decision aggrieved parties can request a full and complete BOTA opinion within 90 days. If BOTA fails to comply with either the 14-day or the 90-day requirements and absent an agreement by the parties or good cause shown, BOTA must return all filing fees to the taxpayer.

Also eliminated is the requirement that a request for reconsideration of final BOTA orders be filed before seeking judicial review. Beginning with final orders or denials of motions to reconsider on or after June 30, 2014, appellants may appeal to the Kansas Court of Appeals or to a Kansas District Court.

Previous to this only the court of appeals had jurisdiction for review of all final orders issued by BOTA. Any appeal made to a district court would be a de novo trial (try the matter anew, the same as if it had not been heard before). Such appeals to the district courts would be conducted by the court in which the property is located; or if the property is located in multiple counties, the appellants would have the option of choosing which district court would hear the appeal.

The bill repealed the requirement that bonds be given of 125% of taxes assessed when reviews of property taxes cases are being sought by a party other than the director of property valuation or a taxing subdivision. The bill also eliminated the requirement that a request for reconsideration of final BOTA orders be filed before seeking judicial review.

A new provision stipulates that one member of BOTA be a licensed and certified general real property appraiser. Additionally, members of BOTA are allowed to serve a maximum of 90 days after the expiration of members' terms.

Also a new mandate stipulates that all appeals be made available to the public and published on BOTA's website within 30 days. Also BOTA is required to publish a monthly report made available to the public and transmitted to all 165 members of the Kansas legislature on all appeals decided, as well as all of those that have not yet been decided and are beyond the new statutory deadlines.

Relative to cases in the small claims division, the chief hearing officer is prohibited from appointing any persons employed by BOTA as hearing officers. The maximum amount of appraised valuation, above which cases cannot be considered in the small claims division, is increased from \$2 million to \$3 million.

Additional language clarifies that notices of appeal to the small claims division could be signed by either taxpayers or their authorized representatives. An added provision states that when the county appeals a small claims decision, the county bears the burden of proof in the appeal.

The salaries of members and the chief hearing officer who are newly appointed after June 30, 2014, is 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.

Additional provisions prohibits BOTA from determining who may sign appeals forms; who may represent taxpayers; deciding what constitutes the unauthorized practice of law; deciding whether contingency fee agreements are a violation of public policy; and impeding any agreement or settlement between a county and a taxpayer.

Also the bill provides that no filing fee be charged to a taxpayer who has filed an appeal for the previous year that has not been decided by BOTA and is beyond the new time period, to any taxpayer filing an appeal in regard to single-family residential property, or to any not-for-profit organization if the valuation of the property that is the subject of the controversy does not exceed \$100,000.

The requirement that appraisals be performed in accordance with certain standards of the Appraisal Foundation in effect as of March 1, 1992 was amended to require that all appraisals be performed in accordance with the Foundation's most current standards.

Cases involving leased commercial and industrial property, the taxpayers bear the burden of proof unless they have furnished the county appraisers with complete income and expense statement for the property, within 30 calendar days on forms regularly maintained by the 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 the taxpayers with an effective date of January 1, are deemed to return the burden of proof to the county appraisers.

Relative to cases involving residential real estate and commercial and industrial real property, appraisals made by counties are 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 are entitled to have the qualifying single-property appraisals accepted into evidence at BOTA.

A new provision prohibits county appraisers from increasing the valuation for two years for certain real property that 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" is defined as a change in the character of the use of the property or a substantial addition or improvement to the property.

The bill goes into effect immediately. *Senate Bill 231 § 1 amending K.S.A. 2013 Suppl. 74-2426, Senate Bill 231 § 2 amending K.S.A. 2013 Suppl. 74-2433, Senate Bill 231 § 3 amending K.S.A. 2013 Suppl. 74-2433f, Senate Bill 231 § 4 amending K.S.A. 2013 Suppl. 74-2434, Senate Bill 231 § 5 amending K.S.A. 2013 Suppl. 74-2437, Senate Bill 231 § 6 amending K.S.A. 2013 Suppl. 74-2438, Senate Bill 231 § 8 amending K.S.A. 2013 Suppl. 77-529, Senate Bill 231 § 9 amending*

K.S.A. 2013 Suppl. 79-505, Senate Bill 231 § 10 amending K.S.A. 2013 Suppl. 79-1448, Senate Bill 231 § 11 amending K.S.A. 2013 Suppl. 79-1460, Senate Bill 231 § 12 amending K.S.A. 2013 Suppl. 79-1609.

Mortgage Registration Tax:

Approval of the Change in Mortgage Registration Tax The 2014 legislative session requires that the mortgage registration tax be phased out over the next five years beginning in 2015 and that none of this tax will go to the state Heritage Trust Fund beginning in 2015.

% of Change over time	Current	2015	2016	2017	2018	2019 & after
Mortgage Registration Tax as % of principal debt secured	0.26%	0.20%	0.15%	0.10%	0.05%	0.00%

Current recording fees being charged would increase beginning in 2015 and a new fee to fund the state Heritage Trust Fund would be added beginning in 2015:

Fees charged by county register of deeds/changes over time	Current	2015	2016	2017	2018 & thereafter
First page of deeds, mortgages, other instruments	\$6.00	\$8.00	\$11.00	\$14.00	\$17.00
Each additional page of such documents	\$2.00	\$4.00	\$7.00	\$10.00	\$13.00
Recording town plats, for each page	\$20.00	\$23.00	\$26.00	\$29.00	\$32.00
Release/Assignment of mortgages	\$5.00	\$7.00	\$10.00	\$13.00	\$16.00
Certifying instruments on record	\$1.00	\$4.00	\$7.00	\$10.00	\$13.00
Signature acknowledgment	\$0.50	\$3.50	\$6.50	\$9.50	\$12.50
IRS tax lien filing notices	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00
IRS/KDOR lien release notices	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00
Liens for materials/services under KSA 58-201	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00
Fee per page for the state Heritage Trust Fund for recording mortgages/mortgage releases (annual county maximum is \$30,000)	\$0.00	\$1.00	\$1.00	\$1.00	\$1.00

A maximum of \$125 charged on all fees to register mortgages of \$75,000 or less goes into effect in 2015.

Fund Receiving Per Page Amount/changes over time	Prior to 2015	2015 and After
Register of Deeds Technology Fund	\$2.00	\$2.00
County Clerk Technology Fund	\$0.00	\$0.50
County Treasurer Technology Fund	\$0.00	\$0.50

An existing separate fee of \$2 per page will be increased to \$3 per page beginning in calendar year 2015, and receipts from this additional \$1 fee would be split into two separate \$0.50 portions and deposited in the County Clerk Technology Fund (CCTF) and the County Treasurer Technology Fund (CTTF), which are new funds created by the bill for each county. Moneys up to \$50,000 in each county deposited in the CCTF and the CTTF will be required to be used by the county clerks and county treasurers to acquire equipment and technological services for the storing, recording, archiving, retrieving, maintaining and handling of certain data. County commissioners will be authorized to divert amounts in excess of \$50,000 in each county for the technological needs of other county offices upon the finding of county clerks or treasurers that such amounts exceed the technological needs of those offices. *House Bill 2643 § 14 amending K.S.A. 2013 Supp. 28-115, House Bill 2643 § 15 amending K.S.A. 79-3102, House Bill 2643 § 16 new.*