



MEMORANDUM

Date: January 26, 2012

To: Local Government Committee

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

Re: AN ACT concerning property taxation

SENATE BILL NO. 348

AN ACT concerning property taxation; amending K.S.A. 79-304, 79-1475 and K.S.A. 2010 Supp. 74-2433f, 79-1448, 79-1460, 79-1609, 79-1701a and 79-1702 and repealing the existing sections.

As the County Appraiser, my office is trying to resolve cases at the earliest possible date. We currently send out Income and Expense surveys to property owners and receive about 16% to 18% return responses. The Property Valuation Division (PVD) Director has the authority to require operating and other expense information to be provided on all properties; however, there is no penalty for non-compliance (K.S.A. 79-1404 *Sixth*).

After notices of value are mailed, the informal conference is covered by K.S.A. 79-1448. At this conference a substantive meeting is to occur. With income-producing properties, a substantive hearing is not "push me to the next level" or being provided with 1-year-old income and expense information. This bill is trying to establish a substantive hearing at the earliest point in the appeal process and resolve the issue that should be applied.

The Legislative Post Audit dated March 2005 has addressed this issue with a penalty. We would prefer, as an alternative, we receive detailed current and trailing two-year income and expense information. We accept the burden of proof at that time. If the property owner fails to give this information at the informal hearing, the burden of proof does not shift even if we receive the information later. The manpower expense and the shrinking county budgets have caused this issue to be brought before the legislation along with the needed efficiency for this process to work.

Section 1. We are trying to resolve cases at the earliest part of the appeal process. In 2011, mid-summer, we had 1300 cases before the Court of Tax Appeals (COTA). As of January 2012, we have resolved 600 cases through an additional process we call settlement conferences held October through December of 2011. Many of these cases, once we received the proper income and expense information, we were able to resolve.

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Attachment 2



The chart below shows the number of cases and their status.

Year	Cases Heard	Closed	Stipulated	Dismissed	No Change	Unresolved
2011	512	442	213	213	16	70

Back in 2002, the Legislative Post Audit report, "Valuing Commercial Buildings for Property Tax Purposes: Determining Whether Current Procedures Ensure Accurate Appraisals at Fair Market Value" (3PA01), made the following comments (page 16):

"County appraisers told us that commercial property owners usually weren't willing to provide this information. For their most recent surveys, the 4 counties in our sample averaged a response rate of only 11%. This is an ongoing problem that we've reported in several audits since 1993.

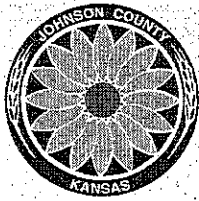
County appraisers also can build their average market rates from other sources, such as commercial publications and national indices, locally advertised rental rates, and actual rent and expense data that commercial property owners provide when appealing a valuation. However, commercial publications and national indices typically are available only for the more urban counties.

State law gives counties the power to require taxpayers to furnish the information, but provides no consequence for failure to comply. K.S.A. 79-104 authorizes the Property Valuation Division to require building owners to furnish earnings and expense information to be used for valuation purposes. A 1994 Attorney General's informal opinion concluded the Director of the Property Valuation Division had the power to require property owners to provide income and expense information to county appraisers. However, without any enforcement provisions, Division and county appraisal staff have no recourse if owners fail to provide the requested information.

The International Association of Assessing Officers recommends that states include statutory penalty provisions for failure to provide the requested information. It also suggests states limit a building owner's right to use income and expense data during an appeal if that information was not submitted to the county when requested. The District of Columbia has established a penalty equal to 10% of the property taxes due for failure to return requested information. Its response rates range from 60 to 75%."

Our suggested law change is to incentivize the people without a penalty. So changing the law is the only option we have available to us.

In addition, Johnson County COTA cases heard in 2011 totaled 47. Getting decisions for the cases heard has been delayed beyond the 120 day statutory timeframe. We have a concern that using staff attorneys as small claims hearing officers are causing the delay for decisions rendered; and I believe this is not considered best practice for this process.



2011 Cases at COTA

Cases Heard	Pending Beyond 120 days
47	20

Section 2. The proposed amendment to K.S.A. 79-304 is to require Kansas residents who own watercraft registered with the Kansas Department of Wildlife and Parks to list such watercraft in the county of residence when such watercraft is temporarily located outside Kansas on January 1. Valuation guidelines of the division of property valuation require watercraft, owned by Kansas residents and registered with the Kansas Department of Wildlife and Parks to be registered and taxed at the residence of the Kansas owner when temporarily located outside Kansas on January 1; however, the Court of Tax Appeals in *In the Matter of the Protest of Hargis*, Docket No. 2011-438-PR, recently held that a boat owned by a Kansas resident, registered with Wildlife and Parks, operated exclusively at Lake Perry in Jefferson County and temporarily stored in Missouri on January 1 was not taxable in Kansas although it was not listed for taxation in Missouri or any other state. The temporary location of watercraft outside Kansas to evade Kansas property taxation has become chronic in recent years and this amendment attempts to address and rectify that situation.

Section 3. In addition, the small claims of the Court of Tax Appeals do not have the same language as the regular division when it comes to burden of proof. Our bill changes small claims, Payment under Protest, as well as Notice of Values.

Section 4. To allow notification to be moved from postal mail to electronic mail when the e-mail address has been provided. If this is passed, we would request the Property Valuation Division (PVD) to provide directives or guidance to implement this e-mail notification process.

Section 5. K.S.A. 79-1701. Correction of clerical errors by county clerk. We are not always accurate and the case (37 Kan.App.2d 902, 159 P.3d 1050) Summary and Conclusion allows an escape property not to be placed on the roll.

[19][20] in summary, we have confirmed that the subject property was realty for these purposes, and this conclusion proved critical to our analysis in applying the various statutory schemes purportedly supporting the belated tax assessments under these circumstances. Because K.S.A. 79-1427a does not apply to real property, and the undervaluation of the real estate parcel qualifies neither as "escaped" under K.S.A. 79-1475 nor as a clerical error subject to correction under K.S.A. 1701 *et seq.*, there is simply no statutory vehicle to support these assessments under these circumstances. Where the legislature has not provided a remedy for a taxing district's undervaluation of a real estate parcel that is not detected prior to sending out tax notices, belated "escaped" **1060 tax assessments on the undervalued parcel must be set aside. *In re Order of Board of Tax Appeals*, 236 Kan. At 413, 691 P.2d 394. For these reasons the assessments are void, and they must be vacated as a matter of law.



Errors can be made if the improvement is recorded on the wrong tract, escaped improvements, the clerk's office sets up the wrong tax district, and taxes under or overstated due to mathematical error. To correct any kind of error under K.S.A. 79-1701 and K.S.A. 79-1702 beyond just a mathematical miscalculation, the bill needs to be changed.

Section 6. Small Claims language to be changed to match Regular Division language of the Court of Tax Appeals.

Section 7 and Section 8. K.S.A. 79-1701. Correction of clerical errors by county clerk. Would allow the County to change the roll for the following reasons:

- (a) Errors in the description or quantity of real estate listed;
- (c) errors whereby improvements located upon on tract or lot of real estate have been assessed as being upon another tract or lot;
- (f) errors whereby the assessment of either real or personal property has been assigned to a taxing district in which the property did not have its taxable situs; and
- (g) errors whereby the values or taxes are understated or overstated as a result of a mathematical miscomputation on the part of the count.