

HOUSE BILL No. 2159

By Committee on General Government Budget

1-30

1 AN ACT concerning the state court of tax appeals; relating to valuation
2 appeals, filing fees, hearings by telephone; terms of judges and the
3 chief hearing officer; good-faith estimate of value; amending K.S.A.
4 2012 Supp. 74-2433, 74-2433f and 74-2438a and repealing the existing
5 sections.
6

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

8 New Section 1. It shall be the duty of any taxpayer appealing the
9 determination of valuation of residential or real property used for
10 commercial and industrial purposes for taxation purposes to provide a
11 good-faith estimate of value to the court with the taxpayer's written notice
12 of appeal.

13 Sec. 2. K.S.A. 2012 Supp. 74-2433 is hereby amended to read as
14 follows: 74-2433. (a) There is hereby created a state court of tax appeals,
15 referred to in this act as the court. The court shall be composed of three tax
16 law judges who shall be appointed by the governor, subject to
17 confirmation by the senate as provided in K.S.A. 75-4315b, and
18 amendments thereto. After the effective date of this act, one of such judges
19 shall have been regularly admitted to practice law in the state of Kansas
20 and for a period of at least five years, have engaged in the active practice
21 of law as a lawyer, judge of a court of record or any other court in this
22 state; and one of such judges shall have engaged in active practice as a
23 certified public accountant for a period of at least five years. In addition,
24 the governor shall also appoint a chief hearing officer, subject to
25 confirmation by the senate as provided in K.S.A. 75-4315b, and
26 amendments thereto, who, in addition to other duties prescribed by this
27 act, shall serve as a judge pro tempore of the court. No successor shall be
28 appointed for any member of the board of tax appeals appointed before
29 July 1, 2008. Such persons shall continue to serve as judges on the court of
30 tax appeals until their terms expire. Except as provided by K.S.A. 46-
31 2601, and amendments thereto, no person appointed to the court, including
32 the chief hearing officer, shall exercise any power, duty or function as a
33 judge of the court until confirmed by the senate. Not more than two judges
34 of the court shall be of the same political party. Judges of the court,
35 including the chief hearing officer, shall be residents of the state. Subject
36 to the provisions of K.S.A. 75-4315c, and amendments thereto, no more

1 than one shall be appointed from any one of the congressional districts of
2 Kansas unless, after having exercised due diligence, the governor is unable
3 to find a qualified replacement within 90 days after any vacancy on the
4 court occurs. The judges of the court, including the chief hearing officer,
5 shall be selected with special reference to training and experience for
6 duties imposed by this act and shall be individuals with legal, tax,
7 accounting or appraisal training and experience. State court of tax appeals
8 judges shall be subject to the supreme court rules of judicial conduct
9 applicable to all judges of the district court. The court shall be bound by
10 the doctrine of stare decisis limited to published decisions of an appellate
11 court other than a district court. Judges of the court, including the chief
12 hearing officer, *shall have terms that expire on the following dates:*
13 *January 15, 2014, for the judge originally appointed in 2011; January 15,*
14 *2015, for the chief judge; January 15, 2016, for the judge originally*
15 *appointed in 2012; and January 15, 2017, for the chief hearing officer.*
16 *Judges of the court, including the chief hearing officer, who are*
17 *subsequently appointed* shall hold office for terms of four years and until
18 their successors are appointed and confirmed. Except as otherwise
19 provided, such terms of office shall expire on January 15 of the last year of
20 such term. If a vacancy occurs on the court, or in the position for chief
21 hearing officer, the governor shall appoint a successor to fill the vacancy
22 for the unexpired term. Nothing in this section shall be construed to
23 prohibit the governor from reappointing any judge of the court, including
24 the chief hearing officer, for additional four-year terms. The governor shall
25 select one of its judges to serve as chief judge. The votes of two judges
26 shall be required for any final order to be issued by the court. Meetings
27 may be called by the chief judge and shall be called on request of a
28 majority of the judges of the court and when otherwise prescribed by
29 statute.

30 (b) Any judge appointed to the state court of tax appeals and the chief
31 hearing officer may be removed by the governor for cause, after public
32 hearing conducted in accordance with the provisions of the Kansas
33 administrative procedure act.

34 (c) The state court of tax appeals shall appoint, subject to approval by
35 the governor, an executive director of the court, to serve at the pleasure of
36 the court. The executive director shall: (1) Be in the unclassified service
37 under the Kansas civil service act; (2) devote full time to the executive
38 director's assigned duties; (3) receive such compensation as determined by
39 the court, subject to the limitations of appropriations thereof; and (4) have
40 familiarity with the tax appeals process sufficient to fulfill the duties of the
41 office of executive director. The executive director shall perform such
42 duties as directed by the court.

43 (d) Appeals decided by the state court of tax appeals which are

1 deemed of sufficient importance to be published shall be published by the
2 court.

3 (e) After appointment, judges of the state court of tax appeals shall
4 complete the following course requirements: (1) A tested appraisal course
5 of not less than 30 clock hours of instruction consisting of the
6 fundamentals of real property appraisal with an emphasis on the cost and
7 sales approaches to value; (2) a tested appraisal course of not less than 30
8 clock hours of instruction consisting of the fundamentals of real property
9 appraisal with an emphasis on the income approach to value; (3) a tested
10 appraisal course of not less than 30 clock hours of instruction with an
11 emphasis on mass appraisal; (4) an appraisal course with an emphasis on
12 Kansas property tax laws and; (5) an appraisal course on the techniques
13 and procedures for the valuation of state assessed properties with an
14 emphasis on unit valuation; and (6) a tested appraisal course on the
15 techniques and procedures for the valuation of land devoted to agricultural
16 use pursuant to K.S.A. 79-1476, and amendments thereto. The executive
17 director shall adopt rules and regulations prescribing a timetable for the
18 completion of the course requirements and prescribing continued
19 education requirements for judges of the court.

20 (f) The state court of tax appeals shall have no capacity or power to
21 sue or be sued.

22 Sec. 3. K.S.A. 2012 Supp. 74-2433f is hereby amended to read as
23 follows: 74-2433f. (a) There shall be a division of the state court of tax
24 appeals known as the small claims and expedited hearings division.
25 Hearing officers appointed by the chief hearing officer shall have authority
26 to hear and decide cases heard in the small claims and expedited hearings
27 division.

28 (b) The small claims and expedited hearings division shall have
29 jurisdiction over hearing and deciding applications for the refund of
30 protested taxes under the provisions of K.S.A. 79-2005, and amendments
31 thereto, and hearing and deciding appeals from decisions rendered
32 pursuant to the provisions of K.S.A. 79-1448, and amendments thereto,
33 and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~aets~~
34 ~~amendatory thereof or supplemental~~ *amendments* thereto, with regard to
35 single-family residential property. The filing of an appeal with the small
36 claims and expedited hearings division shall be a prerequisite for filing an
37 appeal with the state court of tax appeals for appeals involving single-
38 family residential property.

39 (c) At the election of the taxpayer, the small claims and expedited
40 hearings division shall have jurisdiction over: (1) Any appeal of a decision,
41 finding, order or ruling of the director of taxation, except an appeal,
42 finding, order or ruling relating to an assessment issued pursuant to K.S.A.
43 79-5201 et seq., and amendments thereto, in which the amount of tax in

1 controversy does not exceed \$15,000; (2) hearing and deciding
2 applications for the refund of protested taxes under the provisions of
3 K.S.A. 79-2005, and amendments thereto, where the value of the property,
4 other than property devoted to agricultural use, is less than \$2,000,000 as
5 reflected on the valuation notice; (3) hearing and deciding appeals from
6 decisions rendered pursuant to the provisions of K.S.A. 79-1448, and
7 amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes
8 Annotated, ~~and acts amendatory thereof or supplemental amendments~~
9 thereto, other than those relating to land devoted to agricultural use,
10 wherein the value of the property is less than \$2,000,000 as reflected on
11 the valuation notice.

12 (d) In accordance with the provisions of K.S.A. 74-2438, and
13 amendments thereto, any party may elect to appeal any application or
14 decision referenced in subsection (b) to the state court of tax appeals.
15 Except as provided in subsection (b) regarding single-family residential
16 property, the filing of an appeal with the small claims and expedited
17 hearings division shall not be a prerequisite for filing an appeal with the
18 state court of tax appeals under this section. Final decisions of the small
19 claims and expedited hearings division may be appealed to the state court
20 of tax appeals. An appeal of a decision of the small claims and expedited
21 hearings division to the state court of tax appeals shall be de novo.

22 (e) A taxpayer shall commence a proceeding in the small claims and
23 expedited hearings division by filing a notice of appeal in the form
24 prescribed by the rules of the state court of tax appeals which shall state
25 the nature of the taxpayer's claim. Notice of appeal shall be provided to the
26 appropriate unit of government named in the notice of appeal by the
27 taxpayer. In any valuation appeal or tax protest commenced pursuant to
28 articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and
29 amendments thereto, the hearing shall be conducted *by telephone*
30 *conference call unless the taxpayer requests the hearing be held in person*
31 *before the chief hearing officer. Except for a hearing conducted by*
32 *telephone conference call, the hearing shall be conducted* in the county
33 where the property is located or a county adjacent thereto. In any appeal
34 from a final determination by the secretary of revenue, the hearing shall be
35 conducted in the county in which the taxpayer resides or a county adjacent
36 thereto.

37 (f) The hearing in the small claims and expedited hearings division
38 shall be informal. The hearing officer may hear any testimony and receive
39 any evidence the hearing officer deems necessary or desirable for a just
40 determination of the case. A hearing officer shall have the authority to
41 administer oaths in all matters before the hearing officer. All testimony
42 shall be given under oath. A party may appear personally or may be
43 represented by an attorney, a certified public accountant, a certified general

1 appraiser, a tax representative or agent, a member of the taxpayer's
2 immediate family or an authorized employee of the taxpayer. A county or
3 unified government may be represented by the county appraiser, designee
4 of the county appraiser, county attorney or counselor or other
5 representatives so designated. No transcript of the proceedings shall be
6 kept.

7 (g) The hearing in the small claims and expedited hearings division
8 shall be conducted within 60 days after the appeal is filed in the small
9 claims and expedited hearings division unless such time period is waived
10 by the taxpayer. A decision shall be rendered by the hearing officer within
11 30 days after the hearing is concluded and, in cases arising from appeals
12 described by subsections (b) and (c)(2) and (3), shall be accompanied by a
13 written explanation of the reasoning upon which such decision is based.
14 Documents provided by a taxpayer or county or district appraiser shall be
15 returned to the taxpayer or the county or district appraiser by the hearing
16 officer *only upon request* and shall not become a part of the court's
17 permanent records. Documents provided to the hearing officer shall be
18 confidential and may not be disclosed, except as otherwise specifically
19 provided.

20 (h) With regard to any matter properly submitted to the division
21 relating to the determination of valuation of property for taxation purposes,
22 it shall be the duty of the county appraiser to initiate the production of
23 evidence to demonstrate, by a preponderance of the evidence, the validity
24 and correctness of such determination. No presumption shall exist in favor
25 of the county appraiser with respect to the validity and correctness of such
26 determination.

27 Sec. 4. K.S.A. 2012 Supp. 74-2438a is hereby amended to read as
28 follows: 74-2438a. (a) The executive director of the state court of tax
29 appeals shall charge and collect a filing fee, established by rules and
30 regulations adopted by the state court of tax appeals, for any appeal in any
31 proceeding under the tax protest, tax grievance or tax exemption statutes
32 or in any other original proceeding for such court to recover all or part of
33 the costs of processing such actions incurred by the state court of tax
34 appeals. With regard to single-family residential property, the filing fee
35 charged for applications by taxpayers for refunds of protested taxes under
36 the provisions of K.S.A. 79-2005, and amendments thereto, and appeals
37 from decisions rendered pursuant to K.S.A. 79-1448, and amendments
38 thereto, shall not exceed \$35; ~~Provided, however, that no filing fee shall be~~
39 ~~imposed on any such application or appeal of residential property filed~~
40 ~~with the small claims and expedited hearings division.~~ Not-for-profit
41 organizations shall not be charged a filing fee exceeding \$10 for any
42 appeal if the valuation of the property that is the subject of the controversy
43 does not exceed \$100,000.

1 (b) The BOTA filing fee fund is hereby renamed the COTA filing fee
2 fund.

3 (c) The executive director of the court of tax appeals shall remit to the
4 state treasurer at least monthly all tax appeal filing fees received by the
5 state court of tax appeals. Upon receipt of any such remittance, the state
6 treasurer shall deposit the amount in the state treasury to the credit of the
7 COTA filing fee fund.

8 (d) All expenditures from the COTA filing fee fund shall be made in
9 accordance with appropriation acts upon warrants of the director of
10 accounts and reports issued pursuant to vouchers approved by the
11 executive director of the state court of tax appeals or a person or persons
12 designated by such executive director.

13 Sec. 5. K.S.A. 2012 Supp. 74-2433, 74-2433f and 74-2438a are
14 hereby repealed.

15 Sec. 6. This act shall take effect and be in force from and after its
16 publication in the statute book.