

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2614**

As Recommended by House Committee on
Taxation

Brief*

Sub. for HB 2614 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 new 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.

Beginning with final orders or denials of motions to reconsider on or after December 31, 2013, appellants would

*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>

have the right to appeal to the Kansas Court of Appeals or to a Kansas District Court. (Current law requires the appeal 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that bonds be given of up to 125 percent of taxes assessed when reviews of property tax cases are being sought would be repealed.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.

Current language authorizing the Governor to remove members and the chief hearing officer for cause would be replaced with a new provision allowing them to be removed by cause pursuant to filing a petition in Shawnee County District Court. Such cause would include, but not be limited to, failure of the members to have completed continuing education requirements; and failure to issue certain rulings pursuant to the aforementioned new deadline requirements. 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, and that unsigned or incorrectly signed notices of appeal would not be grounds for dismissal and that such cases would still be docketed.

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 acceptable to BOTA, 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 have a presumption of correctness.

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 District Court Chief Judge. (The current COTA Chief Judge receives the salary equal to a District Court Chief Judge; other COTA judges and the chief hearing officer receive a 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, where a presumption of correctness would exist unless counties presented separate property-specific appraisals.

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 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 three 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 being amended, beginning with Section 15, would simply replace numerous existing statutory references to COTA with BOTA.

Background

Proponents of the original bill, 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 bill, 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; whether mandatory acceptance into evidence and presumption of correctness of property-specific appraisals submitted by taxpayers would violate uniform and equal constitutional provisions; and whether removing the specific date relative to Appraisal Foundation standards would

represent an unconstitutional delegation of legislative authority to a non-governmental organization.

After lengthy discussion, the House Taxation Committee recommended on February 25 that a substitute bill be created.

A fiscal note provided by the Department of Revenue indicated the mandatory acceptance into evidence and subsequent presumption of correctness of property-specific appraisals would reduce total statewide assessed valuation and cause a reduction in state property tax levies (the 20-mill mandatory unified school district general fund levy and the 1.5 mills in state building fund levies) beginning in FY 2015. The estimated impact of this provision as it appears in the substitute bill was not immediately available.

The fiscal note also 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 two years 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 two-year 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.