

HOUSE BILL No. 2650

By Committee on Taxation

1-17

AN ACT relating to taxation; concerning timing of taxpayer appeals from department of revenue determinations; amending K.S.A. 79-3226 and K.S.A. 2001 Supp. 74-2438 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. *An appeal may also be taken to the state board of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect.* Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity

1 and correctness of such determination. No interest shall accrue on the
2 amount of the assessment of tax subject to any such appeal beyond 120
3 days after the date the matter was fully submitted, except that, if a final
4 order is issued within such time period, interest shall continue to accrue
5 until such time as the tax liability is fully satisfied, and if a final order is
6 issued beyond such time period, interest shall recommence to accrue
7 from the date of such order until such time as the tax liability is fully
8 satisfied.

9 Sec. 2. K.S.A. 79-3226 is hereby amended to read as follows: 79-
10 3226. (a) As soon as practicable after the return is filed, the director of
11 taxation shall examine it and shall determine the correct amount of the
12 tax. If the tax found due shall be greater than the amount theretofore
13 paid, or if a claim for a refund is denied, notice shall be mailed to the
14 taxpayer. Within 60 days after the mailing of such notice the taxpayer may
15 request an informal conference with the secretary of revenue or the sec-
16 retary's designee relating to the tax liability or denial of refund by filing
17 a written request with the secretary of revenue or the secretary's designee
18 which sets forth the objections to the proposed liability or proposed denial
19 of refund. The purpose of such conference shall be to review and recon-
20 sider all facts and issues that underlie the proposed liability or proposed
21 denial of refund. The secretary of revenue or the secretary's designee
22 shall hold an informal conference with the taxpayer and shall issue a
23 written final determination thereon. The informal conference shall not
24 constitute an adjudicative proceeding under the Kansas administrative
25 procedure act. Informal conferences held pursuant to this section may
26 be conducted by the secretary of revenue or the secretary's designee. The
27 rules of evidence shall not apply to an informal conference and no record
28 shall be made, except at the request and expense of the secretary of
29 revenue or the secretary's designee or taxpayer. The taxpayer may bring
30 to the informal conference an attorney, certified public accountant and
31 any other person to represent the taxpayer or to provide information.
32 Because the purpose of the department staff is to aid the secretary or
33 secretary's designee in the proper discharge of the secretary's or secre-
34 tary's designee's duties, the secretary or secretary's designee may confer
35 at any time with any staff member with respect to the case under recon-
36 sideration. The secretary of revenue or the secretary's designee shall issue
37 a written final determination within 270 days of the date of the request
38 for informal conference unless the parties agree in writing to extend the
39 time for issuing such final determination. A final determination *issued*
40 *within or after 270 days, with or without extension*, constitutes final
41 agency action subject to administrative review by the state board of tax
42 appeals. In the event that a written final determination is not rendered
43 within 270 days, the taxpayer may appeal to the state board of tax appeals

1 *at any time provided that a written extension of time is not in effect.*

2 (b) A final determination finding additional tax shall be accompanied
3 by a notice and demand for payment. Notice under this section shall be
4 sent by first-class mail in the case of individual taxpayers and by registered
5 or certified mail in the case of all other taxpayers. The tax shall be paid
6 within 20 days thereafter, together with interest at the rate per month
7 prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto,
8 on the additional tax from the date the tax was due unless an appeal is
9 taken in the manner provided by K.S.A. 74-2438 and amendments
10 thereto, but no additional tax shall be assessed for less than \$5. Interest
11 at such rate shall continue to accrue on any additional tax liability during
12 the course of any appeal.

13 Sec. 3. K.S.A. 79-3226 and K.S.A. 2001 Supp. 74-2438 are hereby
14 repealed.

15 Sec. 4. This act shall take effect and be in force from and after its
16 publication in the statute book.

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