**Memorandum**

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| **Identifying Information:** | **2000 Legislative Changes** |

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| **Tax Type:** | **Property Tax** |
| **Brief Description:** | **Brief summary of all legislation enacted during the 2000 Legislative Session affecting property tax issues.** |
| **Keywords:** |  |
| **Approval Date:** | **06/14/2000** |

**Body:**

**DIVISION OF PROPERTY VALUATION**

**MEMORANDUM**

**TO:**All County Appraisers

**FROM:**Laura Johnson

**DATE:**June 14, 2000

**SUBJECT:**2000 Legislation Pertaining to Property Tax Laws

The 2000 Legislature made several changes to the property tax laws, or to laws that have some impact upon our offices. Below is a summary of topics addressed, followed by the bill and section where a change was made. Following the summary, you will find the bills in numerical order. Senate Bill 12 was used as the primary property tax vehicle this session.

**Summary**

**Exemptions**:

Motor vehicles used to transport the elderly, disabled and general public in a coordinated transit district are now exempt – Senate Bill 12, Section 3, amending K.S.A. 79-201 *Ninth*, the humanitarian services exemption.

Certain greenhouses used for nursery operations may now be exempt as farm machinery and equipment – Senate Bill 12, Section 4, amending K.S.A. 79-201j.

The renewable energy resource exemption was clarified (pertains chiefly to state-assessed property.) Senate Bill 12, Section 3, amending K.S.A. 79-201 *Eleventh*.

**Valuation and Assessment:**

Land in the federal wetlands reserve program is now clearly land devoted to agricultural use, and is classified and valued as native grassland. Senate Bill 12, Section 7, amending K.S.A. 79-1476.

The statute pertaining to the valuation of oil and gas property was clarified to state that the actual value of the oil and gas production severed from the earth should be given primary consideration. House Bill 2823, amending K.S.A. 79-331.

A proposed constitutional amendment will be placed before the voters this fall that would authorize the legislature to carve out aircraft and watercraft for alternative valuation/tax treatment. Senate Concurrent Resolution No. 1629.

**Appeals:**

County appraisers must provide a written explanation for the reason(s) supporting any decision made as a result of meeting with the taxpayer when an appeal is filed. Senate Bill 12, Section 5, amending K.S.A. 79-1448.

Hearing Officers/Panels must provide a written explanation for the reason(s) supporting any decisions. Senate Bill 12, Section 6, amending K.S.A. 79-1606.

The Board of Tax Appeals’ small claims division must provide a written explanation for the reason(s) supporting any decisions made when a taxpayer files a notice of value appeal or a payment under protest. Senate Bill 12, Section 2, amending K.S.A. 74-2433f.

The representation allowed before the small claims division was clarified, to add tax representatives/agents and county appraisers or their designee, etc. Senate Bill 12, Section 2 amending K.S.A. 74-2433f.

Single-family residential appeals must now appeal first to the small claims division before proceeding to the Board of Tax Appeals (BOTA). Senate Bill 12, Section 2.

The BOTA can now publish decisions utilizing resources other than the state printer. Senate Bill 12, Section 1.

**Administrative:**

The open records law was amended to allow a civil penalty up to $500 when a public agency knowingly violates the act or intentionally fails to furnish information. Also, public agencies must have freedom of information officers and an official custodian. Senate Substitute for Substitute for House Bill 2864.

A new law known as the electronic transactions act passed. Please note that it does not change the signature requirement on personal property renditions. Senate Substitute for House Bill 2879.

Beginning July 1, 2000, state agencies are authorized to receive payments by credit card; by June 30, 2001, state agencies must allow payment by credit card. Substitute for House Bill 2323.

**Bills in Numerical Order**

**Senate Bill 12**

Sections 1 and 2 revise statutes pertaining to the Kansas Board of Tax Appeals (BOTA) and its small claims division. Section 1 simply allows BOTA to publish its orders using resources other than solely the State Division of Printing.

BOTA’s Small Claims Division: Single-Family Residential Appeals

Senate Bill 12, Section 2 requires a taxpayer to appeal the taxes on single-family residential property to BOTA’s small claims division, before proceeding to BOTA. (K.S.A. 74-2433f (a), as amended in 2000).

This new law should benefit most taxpayers. BOTA’s small claims division hears the appeal in the county where the property is located or the adjacent county. The small claims division is also generally able to hear and decide appeals faster than BOTA. (K.S.A. 79-2433f (g), as amended in 2000). The taxpayer may still appeal to BOTA, it must simply be after attempting to resolve the appeal at the small claims division level.

This new law did not change the other steps in the valuation appeal process. This change applies to the notice of value appeal. (K.S.A. 79-1448 [informal meeting with the county appraiser]; K.S.A. 79-1606 [hearing officer or panel level, if a county provides one]; K.S.A. 79-1609 [BOTA level]). It also applies to the payment under protest appeal. (K.S.A. 79-2005).

The new law takes effect July 1, 2000. BOTA advises that it will apply the new law to all single-family residential appeals filed with BOTA on July 1, 2000, or thereafter.

BOTA’s Small Claims Division: Representation Clarified

Senate Bill 12, Section 2 clarifies that a taxpayer may be represented by *a tax representative or agent*, in addition to an attorney, a C.P.A. or a general certified appraiser. It further clarifies that the county (or unified government) may be represented by the county appraiser, the county appraiser’s designee, the county attorney or counselor or other designated representatives. (K.S.A. 74-2433f (f), as amended in 2000).

Effective date: July 1, 2000.

BOTA’s Small Claims Division: Written Explanations for Decisions

Senate Bill 12, Section 2 requires that BOTA’s small claims division provide a written explanation of the reason(s) behind any decision made as a result of a taxpayer’s appeal of their notice of value or payment under protest. (K.S.A. 74-2433f(g) as amended in 2000).

Effective date July 1, 2000.

**Senate Bill 12, Section 3**

Exemptions: Motor Vehicles - Coordinated Transit District

Senate Bill 12, Section 3 amends the existing humanitarian services exemption (K.S.A. 79-201 *Ninth*). The existing exemption is for property owned and operated by a not-for-profit entity exempt from federal income tax under I.R.C. 501(c) (3). Property is generally exempt if it is used for the predominant purpose of providing humanitarian services. However, motor vehicles are exempt only if used exclusively for such purposes.

Under the new law, motor vehicles are exempt if they are used for the purpose of participating in a coordinated transit district in accordance with the provisions of K.S.A. 75-5032 through 75-5037, or K.S.A. 75-5051 through K.S.A. 75-5058.

K.S.A. 75-5032 is known as the elderly and disabled public transportation assistance act, which establishes a fund managed by the department of transportation. K.S.A. 75-5051 through 75-5058 is known as the coordinated transit district act, which authorizes the department of transportation to establish coordinated transit districts to serve the transportation needs of the elderly, disabled and general public citizens of the proposed district.

If motor vehicles are used for these new purposes, they are deemed by the statute to be exclusively used for exempt purposes.

Recall that in K.S.A. 79-213(l)(16), county appraisers have had the authority since tax year 1999 to exempt:

“[V]ehicles which are owned by an organization having as one of its purposes the assistance by the provision of transit services to the elderly and to disabled persons and which are exempted pursuant to K.S.A. 79-201 *Ninth*.”

However, when in doubt, a county appraiser should construe in favor of taxation and assist the applicant for exemption in applying to BOTA for relief. (Directive 92-025).

It is not clear when this new exemption commences. Senate Bill 12 has a general effective date of July 1, 2000, absent a more specific provision. K.S.A. 79-201 has language indicating that the provision of the section applies to taxable years commencing after December 31, 1995. Thus, it is quite possible that this new exemption in the K.S.A. 79-201 series has an effective date of January 1, 1996.

Since the matter is unclear and the tax rolls have already been certified for tax year 2000, applicants should be advised to apply for exemption through the BOTA for tax years 2000 or earlier.

Exemptions: Renewable Energy Resources

Senate Bill 12, Section 3 also clarifies the exemption for property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources. The clarification pertains to the manner in which the exemption is determined for state-assessed purposes. This exemption primarily, if not solely, pertains to state assessed property. The effective date of the clarification coincides with the commencement of the exemption: January 1, 1999.

Exemptions: Greenhouses

Senate Bill 12, Section 4 revised K.S.A. 79-201j, the exemption for farm machinery and equipment. The new law states that the term “farm machinery and equipment” may include any greenhouse not permanently affixed to real estate that is used for a farming or ranching operation. The new law further states that the term “farming and ranching” now includes the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale.

This change results in the property tax statute being more consistent with the definition of “agricultural land” for property tax assessment and classification purposes (K.S.A. 79-1476). It is further consistent with the sales tax exemption for farm machinery and equipment, which has expressly included nurseries for some time (K.S.A. 79-3606(t)). Prior to the change*, T-Bone Feeders v. Martin*, 236 Kan. 641, 649, 693 P.2d 1187 indicated the terms “farming and ranching” used in K.S.A. 79-201j were consistent with the terms as found in K.S.A. 17-5903, and were more narrow than the term “agricultural.”

This new law is effective for tax years 2000 and after. Because the tax rolls have already been certified, taxpayers will likely have to apply to BOTA to receive the tax exemption for this year.

Appeals to the County Appraiser: Written Explanation for Decisions

Senate Bill 12, Section 5 requires county appraisers to provide a written explanation of the reason(s) for a decision made as a result of the meeting held with the taxpayer.

This new law becomes effective July 1, 2000; thus, it will be applied to appeals filed after that date.

Appeals to Hearing Officers/Panels: Written Explanations for Decisions

Senate Bill 12, Section 6 requires county hearing officers/panels to provide a written explanation of the reason(s) for each decision. Effective date: July 1, 2000.

**Senate Bill 12, Section 7**

Land Devoted to Agricultural Use: Federal Wetlands Reserve Program

Senate Bill 12, Section 7 amends the statute pertaining to the valuation of agricultural land based upon its use. (K.S.A. 79-1476). The new law clarifies that land in the federal wetlands reserve program shall be considered land devoted to agricultural use, and shall be classified as native grassland for valuation purposes.

The effective date of the new law is July 1, 2000. The new law must be applied to 2001 values. Taxpayers may seek relief for tax year 2000 by filing an appeal.

**Senate Concurrent Resolution No. 1629**

Aircraft, Watercraft

This bill proposes an amendment to the property tax section of the Kansas Constitution (Article 11, Section 1). If passed by the majority of voters this fall, this proposed amendment to the constitution will allow the legislature to carve out aircraft and watercraft for a different method of taxation.

The proposed constitutional amendment would allow the legislature to define aircraft and watercraft (as long as that definition is within the realm of a common man’s understanding of the terms; *see* Attorney General’s Opinion No. 99-21). In addition, it would allow the legislature to exempt the property from the current ad valorem tax and subject it to a tax on another basis. Currently, aircraft and watercraft are valued based upon their fair market value and assessed at 30%. We do not yet know if this proposed amendment will pass, when the legislature may act upon the authority the amendment would provide, or how the legislature would decide to tax this property under any different method.

**Substitute for House Bill 2323**

State – Credit Card Payments

This new law requires any state agency which imposes or collects fees, tuition or other charges to accept payment in the form of a personal, certified or cashier’s check or money order. In addition, an agency may accept payment by credit card. The agency may impose an additional fee to recover the actual amount of any cost incurred by reason of the method of payment. After June 30, 2001, a state agency must accept credit card payments. The law takes effect July 1, 2000.

At this point in time, the division is not prepared to accept credit card payments for the few fees we charge (e.g., the RMA examination fees). We will prepare to accept credit card payments by July 1, 2001.

**House Bill 2823**

Clarification – Oil and Gas

This bill amends K.S.A. 79-331, a property tax statute pertaining to the valuation of oil and gas property. The bill adds a new paragraph at the end of the statute clarifying that for purposes of valuing oil and gas leases, primary and predominant consideration is given to the actual value of oil and gas production severed from the earth.

The current law requiring the county appraiser to consider factors such as the current age and probable life of the wells, and the extent and permanency of the market, etc. continues to exist. Furthermore, the new amendment states that it is for clarification purposes, and does not state that oil and gas leases should be valued by solely considering the value of the oil and gas production severed from the earth.

It is our position that this new law does not change the manner in which oil and gas wells are currently valued. Past production has been, and will continue to be considered when valuing an oil or gas lease. The new language in the statute simply mirrors what the courts have already recognized regarding the valuation of oil and gas leases.

“What is assessed is the lease, not the oil [or gas] produced. Production is merely one gauge by which the value of the reservoir, and in turn the lease, is measured.” (Emphasis added, *Angle v. Board of County Commissioners*, 214 Kan. 708, 713, 522 P.2d 347 (1974).

It is further our position that we are required by the Kansas Constitution to value the entire mineral leasehold interest, and not merely a part of it (i.e., not just the severed interest). *State ex rel. Stephan v. Martin*, 227 Kan. 456, 608 P.2d 880 (1980)(director precluded from applying an across-the-board 20% discount on farm machinery and equipment due to economic conditions affecting the owner of the business rather than a decline in the market value of the equipment itself); *and State ex rel. Stephan v. Martin*, 230 Kan. 747, 641 P.2d 1011 (1982)(K.S.A. 79-331 upheld as constitutional by construing the statute to appraise the entire lease or property; production is but one factor to be considered when valuing such property).

This bill takes effect upon publication in the Kansas register.

**Senate Substitute for Substitute for House Bill 2864**

Open Records Law

This bill amends the open records law. **While we are providing a brief summary of changes, your county counselor/attorney should be your primary source of information for implementing the new law in your county.**

As a general rule, government records are open to the public. There is a list of exceptions to this general rule in K.S.A. 45-221. One exception to the list of records considered confidential was stricken this session: *(see following page)*

**Senate Substitute for Substitute for House Bill 2864, *cont.***

Open Records Law, *cont.*

One exception to the list of records considered confidential was stricken this session:

~~“(32) The bidder’s list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.”~~

In addition, K.S.A. 45-223 was amended. Formerly, no public agency, officer or employee could be held liable for damages resulting from the failure to provide access to a public record in violation of the open records act. That language was stricken, and the following paragraph was added:

“(a) Any public agency subject to this act that knowingly violates any of the provisions of this act or that intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed $500 for each violation.”

Finally, the governing body of every public agency in Kansas that maintains public records must now designate a freedom of information officer. This officer is responsible for providing education, brochures and information concerning the open records act and be available to resolve disputes and respond to inquiries. In addition, an official custodian must make the brochures designed by the freedom of information officer that include in plan language the right of the requestor, responsibilities of public agencies, and procedures for inspecting and obtaining copies of open records.

These changes take effect July 1, 2000.

**Senate Substitute for House Bill 2879**

Uniform Electronic Transactions Act

This new law is known as the uniform electronic transactions act. It applies to state agencies, and becomes effective July 1, 2000.

This law does not eliminate the need for a person to personally sign the personal property rendition required annually. In addition, if a tax preparer filed the statement, they must also sign the rendition and certify that it is true and correct. (K.S.A. 79-306).

**Date Composed: 06/13/2000 Date Modified: 10/09/2001**

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