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**MEMORANDUM**

**TO:** County Appraisers, County Clerks, County Treasurers & Register of Deeds

**FROM:** Tony R. Folsom, Deputy Director

**DATE:** June 6, 2008

**SUBJECT:** 2008 Legislation Pertaining to Property Valuation and Assessment Laws

Below is a summary by bill number followed by an analysis of each bill.

**SUMMARY**

**Substitute for House Bill 2018**

- Abolishes the Board of Tax Appeals and creates the Court of Tax Appeals, which is an independent agency and administrative law court within the executive branch of state government.

**Senate Substitute for House Bill 2434**

**Valuation and Assessment**

- Provides for assessed valuation penalties to be assessed against public utilities that do not timely file their annual return by the March 20<sup>th</sup> statutory deadline. Sen. Sub. for HB 2434 New Sections 1 and 2.
- Amends K.S.A. 79-1803 to provide that if a penalty is assessed against a public utility, the amount of the penalty shall not be considered in computing the final tax levy rate. SSHB 2434 Section 5.
- Provides that a bed, body or box that is regularly used predominantly in a business or industry and is attached to a motor vehicle shall be classified and valued as machinery and equipment. Does not include any bed, body or box that is attached to a motor vehicle by the motor vehicle manufacturer. SSHB 2434 New Section 10.

- Amends K.S.A. 2007 Supp. 79-223 (c) to provide that a county appraiser shall not reclassify any property that is properly classified as machinery and equipment. SSBH 2434 Section 18.

### Exemptions

- Provides that when an application for exemption is filed with a county appraiser, the county appraiser shall notify the county clerk and the county clerk is not required to include the assessed valuation of such property in the applicable taxing districts. SSBH 2434 New Section 3.
- Provides that when a public utility has filed an exemption with the division of property valuation, the director is to notify the county clerk(s) of the counties where the property is located and the county clerk is not required to include the assessed valuation of such property in the applicable taxing districts. SSBH 2434 Section 4.
- Provides an exemption for all other personal property if the purchase price was \$750 or less. K.S.A. 2007 Supp. 79-213 (l) is amended to provide that a county appraiser may remove such property from the tax rolls without a Board of Tax Appeals order. SSBH 2434 New Section 6 and Section 17.
- Provides an exemption for any building and personal property therein constructed on property of Kansas University or a related endowment association, owned or operated, by a Kansas not-for-profit entity, for the purpose of strategic technology acquisition and commercialization incubator. SSBH 2434 New Section 7.
- Amends K.S.A. 2007 Supp. 79-201a to add a new subsection *Twenty-Second* that provides an exemption for certain property owned by a postsecondary educational institution, which is leased for a period not to exceed five years by a for-profit company and is actually and regularly used exclusively for research and development. SSBH 2434 Section 14.
- Amends K.S.A. 2007 Supp. 79-201b *Fourth* to provide an exemption for all real property and personal property actually and regularly used exclusively for the temporary housing of limited or low income, single-parent families in need of financial assistance. SSBH 2434 Section 15.
- Amends K.S.A. 2007 Supp. 79-201j to include in the definition of “farm machinery and equipment” that qualifies for the exemption any bed, body or box that is attached to a motor vehicle and is actually and regularly used in any farming or ranching operation. Does not include any bed, body or box that is attached to a motor vehicle by the motor vehicle manufacturer. SSBH 2434 Section 16.

### Property Tax Relief

- Creates the Selective Assistance for Effective Senior Relief (SAFESR) act that provides for a credit against the income tax liability equal to a percentage of the amount of property taxes paid. SSHB 2434 New Section 12.
- Amends K.S.A. 2007 Supp. 79-4502 to provide that the definition of income for homestead property tax refund purposes shall not include social security payments received by individuals who have been receiving social security disability payments prior to attaining the age of retirement. SSHB 2434 Section 26.

### House Bill 2520

- Amends K.S.A. 58-3115a concerning condominiums to provide that developers and not the individual condominium owners are responsible for property taxes on convertible land.

### Senate substitute for House Bill 2923

- Provides that a person who is full-time military and is or soon to be mobilized or deployed outside of the U.S. for at least six months solely by reason of military orders may elect to defer all or part of such person's real property taxes for such person's principal place of residence.

### Senate Bill 586

- Amends two electric public utility exemption statutes K.S.A. 2007 Supp. 79-258 and 79-259 to correct cross-references to subsections in K.S.A. 2007 Supp. 66-128.

### ANALYSIS

#### Substitute for House Bill 2018

The majority of the bill is changing the references in statutes from the Board of Tax Appeals to the Court of Tax Appeals. The substantive changes are in Sections 1 through 17. The major changes are:

- Abolishes the Board of Tax Appeals and in its place creates the Court of Tax Appeals (COTA), which is an independent agency and administrative law court within the executive branch of state government.
- Consists of three tax law judges appointed by the Governor, one shall be a lawyer, one a CPA and for the third judge there are no specific professional qualifications.

- One of the judges shall be selected by the Governor to be Chief Judge.
- The Governor shall appoint a chief hearing officer who oversees the small claims and expedited hearings division and is subject to being called to serve as a judge in cases where one of the three tax law judges has a conflict or is not able to participate for some reason.
- No more than one of the judges or chief hearing officer may be from the same Kansas congressional district, unless after having exercised due diligence, the Governor is unable to find a qualified replacement within 90 days after any vacancy occurs.
- Amends K.S.A. 74-2426 to provide that all appeals of COTA final decisions issued after June 30, 2008, will be to the Court of Appeals. Equalization and payment under protest valuation appeals to district courts are eliminated.
- Any member of the Board of Tax Appeals appointed before July 1, 2008, shall continue to serve as judges on the Court of Tax Appeals until their term expires.
- Small Claims Division is changed to the Small Claims and Expedited Hearings division. Amends K.S.A. 74-2433g to provide that the chief hearing officer appoints the hearing officers for this division.
- Amends K.S.A. 2007 Supp. 74-2438a to allow for a filing fee up to \$35.00 to be charged for single-family residential property appeals to the Court of Tax Appeals.

### **Senate Substitute for House Bill 2434**

**New Section 1 (effective July 1, 2008):** Subsections (a) and (b) provide that any public utility that is required to file a return that fails to file by March 20<sup>th</sup> shall be subject to a late filing penalty as follows:

- Up to one month late - 5% of the assessed valuation, or \$100,000, whichever is less.
- An additional 5%, or \$100,000, whichever is less, for each additional month or fraction thereof.
- Not to exceed 25% of the assessed value, or \$500,000, whichever is less, in the aggregate.
- The director of property valuation, upon good cause shown, may grant one or more extensions to file not to exceed 30 days in the aggregate.
- If **within one year** of the filing date a public utility fails to make a return or fails to file a complete return, the director shall determine the assessed value of the property and add a penalty of 50%, or \$1,000,000 of the assessed value, whichever is less.

Subsection (c) provides that:

- The director for just cause shown may abate or reduce any penalty imposed.
- A public utility may appeal any penalty imposed to the Board of Tax Appeals within 30 days after the director has notified the public utility in writing of the penalty assessment, or if an informal conference has been requested, within 30 days after the mailing of the notification of the results of the informal conference.

- The Board of Tax Appeals may abate or reduce any penalty imposed upon a finding of excusable neglect or whenever the property is repossessed by a secured creditor and such secured creditor pays the taxes and interest due.

**New Section 2 (effective July 1, 2008):** Subsection (a) provides that if the director discovers that the assessed valuation of any property of a public utility was omitted from the certification, the director shall certify to the county clerk of each county the amount of assessed valuation apportioned to each taxing unit therein that was omitted from the certification and the county clerk shall place the property on the tax roll as an added tax.

If **after one year** of the filing date, the director discovers that any property of a public utility which was subject to taxation for any year or years for the prior two years has not been listed or has been underreported for whatever reason, such property shall be deemed to have escaped taxation and penalties added as follows:

- If the property has **not been listed for the current year**, the director shall list and appraise the property and add penalties as prescribed in Section 1 and shall be designated on the appraisal roll as an added appraisal.
- If the property was **not listed for the prior year or two years**, the director shall list and appraise the property and add 50%, or \$1,000,000 of the assessed value, whichever is less, as a penalty for each year during which such property was not listed, and it shall be designated on the appraisal roll as escaped appraisal for each preceding year or years.
- If the property was listed but was **underreported for the prior year or two years**, the director shall list and appraise the underreported portion of the property and add 50%, or \$1,000,000 of the assessed value, whichever is less, as a penalty for escaping taxation for each year during which the property was underreported and it shall be designated on the appraisal roll as escaped appraisal for each preceding year or years.
- The county clerk shall place such property on the tax rolls and compute the amount of tax due based upon the mill levy for the year or years in which such tax should have been levied, and shall certify such amount to the county treasurer as an added or escaped property tax bill.
- The tax shall be due immediately and payable within 45 days after the issuance of an additional or escaped property tax bill by the county treasurer. If the taxes are not paid within 45 days they shall be deemed delinquent and the county treasurer shall collect and distribute such tax in the same manner as other delinquent taxes.

Subsection (b) provides that:

- The director for just cause shown may abate or reduce any penalty imposed.
- A public utility may appeal any penalty imposed to the Board of Tax Appeals within 30 days after the director has notified the public utility in writing of the penalty assessment, or if an informal conference has been requested, within 30 days after the mailing of the notification of the results of the informal conference.
- The Board of Tax Appeals may abate or reduce any penalty imposed upon a finding of excusable neglect or whenever the property is repossessed by a secured creditor and such secured creditor pays the taxes and interest due.

**New Section 3 (effective July 1, 2008):** Whenever an application for exemption is filed with a county appraiser, the county appraiser shall notify the county clerk of the filing and the county clerk shall not be required to include the assessed valuation of the property in the applicable taxing districts until such time as the application is denied by the Board of Tax Appeals or if judicial review is requested, judicial review is finalized.

**Section 4 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-5a27 to provide that whenever an application for exemption is filed with the director of property valuation, the director shall notify the county clerks where the subject property is located of the filing and the county clerk shall not be required to include the assessed valuation of the property in the applicable taxing districts until such time as the application is denied by the Board of Tax Appeals or if judicial review is requested, judicial review is finalized.

**Section 5 (effective July 1, 2008):** Amends K.S.A. 79-1803 to provide that if a penalty is assessed against a public utility for failure to timely file the annual return, the county clerk shall not consider the amount of the penalty in computing the final tax levy rate.

**New Section 6 (effective for all tax years after December 31, 2008):** Provides an exemption for any personal property that is classified pursuant to section 1 of article 11 of the Kansas Constitution in subclass (6) of class 2, which would be required to be listed pursuant to K.S.A. 79-306, and whose purchase price is \$750 or less. The exemption applies to watercraft, non-highway motor vehicles, mopeds, canoes, kayaks, certain trailers, all-terrain vehicles, golf carts, etc.

**New Section 7 (effective for all tax years after December 31, 2008):** Provides an exemption for any building, and any personal property therein, constructed on property of the university of Kansas or a related endowment association, or both, owned or operated, or both, by a Kansas not-for-profit entity, for the purpose of strategic technology acquisition and commercialization incubator.

**New Section 10 (effective July 1, 2008):** Provides that a bed, body or box that is regularly used predominantly in a business or industry and is attached to a motor vehicle, except for a bed, body or box attached by the motor vehicle manufacturer, shall be classified as machinery and equipment within subclass 5 of class 2 of section 1 of article 11 of the Kansas Constitution and shall be valued pursuant to K.S.A. 79-1439 (b)(2)(E) as machinery and equipment. While not stated in this legislation, if such bed, body or box is purchased or leased after June 30, 2006, it is exempt as machinery and equipment pursuant to K.S.A. 2007 Supp. 79-223.

**New Section 12:** Creates the Selective Assistance for Effective Senior Relief (SAFESR) act. Provides for an income tax credit:

- In an amount equal to 45% of the amount of property taxes actually and timely paid for tax years 2008, 2009 and 2010.
- For tax years 2011 and thereafter the credit is 75%.

- The taxpayer must be 65 years or older and have a household income equal to or less than 120% of the federal poverty level for two persons.
- The property taxes may be paid upon real or personal property used for residential purposes of such taxpayer if it is the taxpayer's principal place of residence for the tax year the credit is claimed.
- The credit may not exceed the amount of property taxes actually paid by the taxpayer.
- The credit is not available for taxpayers who claim a homestead property tax refund.
- If the amount of the credit exceeds the taxpayer's income tax liability, the excess credit shall be refunded to the taxpayer.

**Section 14 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-201a to add a new subsection *Twenty-Second* that creates an exemption for all real and tangible personal property owned by a postsecondary educational institution, as defined by K.S.A. 2007 Supp. 74-3201b, or owned by the board of regents on behalf of the postsecondary educational institution, which is leased for not more than five years by a for-profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received from such company is used exclusively for educational or scientific purposes.

**Section 15 (effective for all taxable years after December 31, 2006):** Amends K.S.A. 2007 Supp. 79-201b *Fourth* to provide an exemption for temporary housing of 24 months or less for limited or low income, single-parent families in need of financial assistance who are enrolled in a program to receive life training skills, which is operated by a charitable or religious organization.

**Section 16 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-201j to provide that the term "farm machinery and equipment" for exemption purposes includes any bed, body or box that is attached to a motor vehicle and is actually and regularly used in any farming or ranching operation, except for a bed, body or box attached by the motor vehicle manufacturer.

**Section 17 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-213(l) to provide that county appraisers may remove personal property exempted under the \$750 or less purchase price exemption without a Board of Tax Appeals order.

**Section 18 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-223 subsection (c) to provide that a county appraiser shall not reclassify any property that is properly classified for property tax purposes as machinery and equipment pursuant to subclass (5) of class 2 of section 1 of article 11 of the Kansas Constitution.

**Section 26 (effective July 1, 2008):** Amends K.S.A. 2007 Supp. 79-4502 subsection (a) to provide that the definition of income for homestead property tax refund purposes shall not include social security payments received by individuals who have been receiving Social Security disability payments prior to attaining the age of retirement. This assures that disabled individuals will not have their homestead refunds reduced by virtue of having reached retirement age.

## **House Bill 2520**

**Section 1 (effective July 1, 2008):** Amends K.S.A. 58-3115a concerning condominiums. Prior to this amendment, convertible land, which is land of a condominium site that is waiting to be developed into condominiums, was deemed part of the common area and therefore the value of this undeveloped land and the subsequent taxes were shifted to the existing condominium owners. The amendment provides that until the expiration of the period during which conversion may occur, or until actual conversion, whichever occurs first, the developer is liable for real property taxes assessed against the convertible land.

## **Senate Substitute for House Bill 2923**

**New Section 4 (effective July 1, 2008):** Provides for a deferral of property taxes as follows:

- A person who is full-time military and is or soon to be mobilized or deployed outside of the U.S. for at least six months solely by reason of military orders.
- May elect to defer all or part of their real property taxes on their principal place of residence.
- The claim for deferral must be filed prior to December 1 of the year in which the person is electing to make a deferral.
- The deferral may continue for up to two years while the individual is serving in active military duty.
- During this period, interest or penalties shall be waived.
- County clerks are to provide the forms for requesting a deferral and the claim is to be filed with the county treasurer of the county where the property is located.
- A person who is a family member or an attorney-in-fact of such person may file the claim if the person's military service prevents them from filing the claim.
- The claim is to be accompanied by proof of military status in a form provided by the secretary of revenue.
- The deferred taxes become payable when the deferral period ends, or the property is sold or title is transferred to someone other than the person who made the claim.

## **Senate Bill 586**

**Section 3 (effective July 1, 2008):** Amends two exemption statutes K.S.A. 2007 Supp. 79-258 and 79-259 to correct cross-references to subsections in K.S.A. 2007 Supp. 66-128. Also amends K.S.A. 2007 Supp. 66-128 to eliminate the requirement that in order to qualify for an exemption an electric generation facility had to be placed in service on or after January 1, 2001. Finally, the language indicating that the definition of an electric generation facility did not include a nuclear generating facility is deleted.