

PAYMENT UNDER PROTEST APPEAL GUIDE

*In Kansas you have two opportunities to appeal the value of your property. If you appeal at the time of paying taxes, it is called a **Payment Under Protest**. This guide is designed to assist most taxpayers prepare for that process. It was not designed for appeals concerning land devoted to agricultural use or commercial and industrial machinery and equipment because such property is not valued based upon its fair market value. For more information about the other opportunity to appeal, by appealing the valuation notice that you receive in the spring, see the publication **A Guide to the Property Valuation Appeal Process – Equalization Appeals**. For more information about the appeals process in general, please contact your county appraiser.*

1. Why do county appraisers appraise property?

Each year the cost of local services is spread across the value of taxable property. (Local budgets ÷ assessed value of taxable property = mill levy.) The statewide school mill levy is 20 mills (\$20 for every \$1000 assessed value). County appraisers are responsible for uniformly and accurately valuing all property each year. That way, all citizens fairly share in supporting the cost of local services. Local services include police and fire protection, roads, parks, public health services and schools.

2. How is property valued for tax purposes?

All property is valued annually as of January 1. Most property is valued based on its fair market value. Exceptions are land devoted to agricultural use, which is valued based on its income or productivity, and some commercial and industrial machinery and equipment, which is valued based on a formula set forth in Kansas laws. For more information, contact your county appraiser or the Kansas Division of Property Valuation at (785) 296-2365.

3. What is fair market value and how is it determined?

Fair market value is the amount an informed buyer is willing to pay, and an informed seller is willing to accept for property in an open market without undue influences.

The county appraiser considers three approaches to value: cost, sales, and income.

Sales Approach

The appraiser reviews similar properties that have sold, compares them to your property, and may make adjustments for differing characteristics. This type is typically applied to residential property in areas with a substantial number of sales, but some counties may also apply it to commercial property.

Cost Approach

In the cost approach, the appraiser determines replacement cost new of the property less depreciation. This approach is particularly helpful when property is new or unique or if there are few sales in the area.

Income Approach

In the income approach, the value of the property is estimated using the income the property is expected to produce in the future. It is used to value commercial property and apartments when sufficient market rent information is available, but some appraisers may also develop a type of income approach for houses in areas with a substantial number of rental properties.

4. How do I know if the value on my property is correct?

Ask your county appraiser for copies of the appraisal card and cost report for your property. These documents will show the information the county has about your property – the number of rooms, type of construction, condition, square footage, etc. Review it and verify that the information is accurate. If your property is a commercial building, also ask for the income valuation report, which will show how the appraiser considered typical rental income and expense rates for similar structures when determining value.

For residential property the county can also provide you with a comparable sales report which lists the data on your property compared with the data and sale prices of up to five homes the county considers similar to yours. Drive by those homes and make sure that they are similar. If not, take photos of them to your meeting or hearing to show how they differ. Some counties may be able to provide this information for commercial buildings as well.

If you believe that the county's value does not reflect the fair market value of your property as of January 1, you should appeal. The appeals process is an opportunity to review a property in more detail. We all want values to be accurate so we have a fair basis for sharing the cost of local services.

5. What if my value increased?

In order for the county to increase a property's value, they must have reviewed the record of the property's last physical inspection and have documentation supporting the increase.

If the value increases within the next 2 years following a year when the value was reduced because of an appeal, the county must also document *substantial and compelling reasons* for the increase.

Substantial and compelling reasons are defined as a change in the character of the use of the property or a substantial addition or improvement. Substantial addition or improvement is defined as the construction of any new structures or improvements or the renovation of existing structures or improvements. Not included in the definition are maintenance or repair of existing improvements or reconstruction or replacement of existing equipment or components of any improvements.

6. How do I appeal by paying taxes under protest?

Counties mail tax statements beginning in November through December 15th. A protest must be filed either 1) at the time the taxes are actually paid; or 2) if the whole or part of the taxes are paid prior to December 20th, then no later than December 20.

If an escrow or tax agent paid the taxes prior to December 20th, then the protest must be filed no later than January 31st of the following year. The protest must be made in writing on a form that is available from your county treasurer or from the Board of Tax Appeals. You may not pay taxes under protest if you already appealed the valuation notice on the same property for the same tax year.

Once you begin the payment under protest process if you abandon your protest you can NOT file another protest or any other type of appeal later for the same property and tax year.

Informal Meeting

Within 15 days after receiving a valid payment under protest form, the appraiser will notify you of the date of your informal meeting. At the informal meeting, the county will produce evidence to substantiate the property's valuation. It is also your opportunity to explain why you believe the county's value is incorrect.

After the meeting, the appraiser will mail you a written notice of results. If any change in value is made, the notice must be sent within 15 days. If no change in value is made, the notice may be sent later.

Board of Tax Appeals (BOTA) Small Claims and Expedited Hearing Division

If you are not satisfied with the informal meeting results, you may appeal the informal meeting results to the BOTA Small Claims Division if a) the property is a single-family residence or b) the property has a value below \$3 million and is not agricultural land. If your property is a single family residential property, you MUST appeal to the Small Claims Division before proceeding to the full BOTA.

To appeal, file the proper form with BOTA within 30 days from the mailing date of the informal meeting results. Usually the BOTA appeal form is part of the notice of results. If necessary, you may also obtain a form from the *County Clerk* or from BOTA. Filing fees may apply, and you must also send a copy of the protest form to the county appraiser.

The county must initiate the production of evidence to substantiate the property's valuation. There is no presumption of correctness with regard to the county's value. If the property is leased commercial and industrial property, the burden of proof is on the taxpayer unless you furnished a complete income and expense statement for the property for the 3 prior years.

Please contact BOTA for more detailed information.

Board of Tax Appeals (BOTA)

You may appeal a Small Claims decision or, if your property is not a single family residence, you may also appeal the county appraiser's informal meeting decision to BOTA. If your property is a single family residential property, you **MUST** appeal to the Small Claims Division before proceeding to BOTA.

To appeal, file the proper form with BOTA within 30 days from the mailing date of the Small Claims Division or county appraiser's informal meeting decision. The appeal form should be part of the notice of results that you receive or you may obtain a copy from BOTA. Filing fees may apply. You must also file a copy of the appeal form with the county appraiser.

The county must initiate the production of evidence to substantiate the validity and correctness of the property's valuation, except in the case of leased commercial and industrial property when the burden of proof shifts to the taxpayer unless you have furnished a complete income and expense statement for the property for the 3 prior years.

Generally BOTA will issue a written summary decision within 14 days after conclusion of the hearing unless the parties agree to an extension. After receiving the summary decision, any party may, within 14 days, request a full and complete opinion, which must be served within 90 days. Or within 15 days, an aggrieved party may file a petition for reconsideration or appeal the Board's decision to either district court or the court of appeals.

Please contact BOTA for more detailed information.

7. What should I bring to the hearing?

Even though the burden of proof may be on the county, be prepared to show why your value is more accurate. You will want to provide information that supports your request for a lower value. Some examples are:

- Recent sales information about property similar in condition, quality, style, age and location.
The appraiser's office can provide you with comparable sales reports for your property or similar properties upon request. Be sure to allow time for processing and mailing.
- A sales contract for your property if it was purchased within the last 2 or 3 years.
- Photos and contract/engineering estimates of the cost to repair any structural damage the county did not fully consider.
- A recent appraisal report for your property prepared by a fee appraiser.
- A complete income and expense statement for the property for the 3 prior years, in the case of leased commercial and industrial property.

8. Can another person attend hearings on my behalf?

Someone else may attend the informal meeting with the county appraiser, however if the person representing you is not an attorney, you should first complete a Declaration of Representative form provided by the county appraiser.

At a BOTA Small Claims Division hearing, a taxpayer may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee. If a representative appears without the taxpayer, the representative should have a completed Declaration of Representative form. Please contact BOTA for more detailed information.

At a full BOTA hearing a taxpayer may appear in person or by one of the representatives listed above, however a Declaration of Representative form must be completed and, if the representative is not an attorney, they will not be allowed to question witnesses. Please contact BOTA for more detailed information.

9. If I bought this property last year, shouldn't the value be the same as what I paid for it?

Your property will not necessarily be valued at its recent purchase price. One sale by itself does not determine market value, although it is generally given a great deal of weight. The county appraiser must first determine whether the sale price reflects the market. That is, whether the sale price is the result of an arm's length transaction between a knowledgeable, willing seller and buyer. The sale is then considered along with sales of similar properties. Market conditions sometimes change between the time a property is purchased and its appraisal date (January 1).

10. How do I get more information on BOTA rules and procedures?

Contact BOTA by calling (785) 296-2388 or visiting their website at www.kansas.gov/bota.