

Approved On: _____

Minutes of the House Committee on Assessment and Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on February 8, 1985 in room 519 South at the Capitol of the State of Kansas.

The following members were absent:

Representatives Vancrum, Ott, Erne, Leach and Wunsch

Committee staff present:

Tom Severn, Legislative Research
Melinda Hanson, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Mr. Fred Weaver spoke concerning several problems that the Board of Tax Appeals has encountered in relation to valuation, assessment, and equalization. He said that a centralized and specialized audit team is necessary to allow for proper enforcement procedures and insure compliance with property tax laws. (Attachments 1 and 2)

Mr. Keith Farrar discussed 79-201d, property exempt from taxation. (Attachment 3)

Linda Terrill, General Counsel for Board of Tax Appeals, discussed a variety of proposals. These have been referred to the subcommittee on property tax. (Attachments 4 through 19)

The minutes of February 7 were reviewed. There being no change, they were approved as presented.

There being no further business, the chairman adjourned the meeting.



E. C. Rolfs, Chairman

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO SPEAK TO YOU TODAY CONCERNING SEVERAL PROBLEMS THAT THE BOARD OF TAX APPEALS HAS ENCOUNTERED.

I WANT TO TALK TO YOU TODAY ABOUT ONE IDEA THAT COULD HELP SOLVE SOME OF THE PROBLEMS FACING US TODAY IN THE AREA OF PROPERTY TAXATION; THAT BEING THE PROPOSAL FOR AD VALOREM AUDITORS.

I HAVE NO PARTICULAR PRIDE IN AUTHORSHIP, AND FOR THAT REASON I HAVE NOT BROUGHT UP A SPECIFIC PROPOSAL. MY SUGGESTION IS THAT YOU CONSIDER CREATING SEVERAL NEW POSITIONS WITHIN THE DEPARTMENT OF REVENUE WITH THE PURPOSE OF AUDITING PERSONAL PROPERTY RENDITIONS.

IT HAS BEEN BROUGHT TO THE ATTENTION OF THIS BOARD THAT SEVERAL TAXPAYERS INTENTIONALLY UNDER-REPORT THEIR PERSONAL PROPERTY HOLDINGS BECAUSE THE COUNTY APPRAISER DOES NOT HAVE THE ADEQUATE AMOUNT OF TIME OR STAFF TO CATCH THEM. ALTERNATIVELY, THIS BOARD HAS ALSO SEEN TAXPAYERS WHO OVER-REPORT THEIR PERSONAL PROPERTY HOLDINGS BECAUSE OF IGNORANCE OF THE SYSTEM.

THERE ARE A NUMBER OF STEPS AND PROCEDURES INCLUDED IN THE VALUATION, ASSESSMENT, AND EQUALIZATION PROCESS THAT THIS BOARD BELIEVES THAT A CENTRALIZED AND SPECIALIZED AUDIT TEAM IS NECESSARY TO ALLOW FOR THE PROPER ENFORCEMENT PROCEDURES TO INSURE COMPLIANCE WITH THE PROPERTY TAX LAWS.

WITH THAT SUGGESTION, I WILL STAND FOR QUESTIONS.

Fred L. Weaver

79-1610. Decision of board; notice to taxpayer; change in assessment of class of property; appeal not heard is denied. Notice of the decision of the board on any appeal shall be mailed to the taxpayer within five (5) days after the date of the making of such decision. Notice of any change involving the assessment of a class or classes of property shall within five (5) days be mailed to the director of property valuation. Any appeal duly perfected not heard by the board prior to the date of final adjournment of the board, shall be deemed to have been denied as of the date of final adjournment and the board shall mail a notice of such denial to the taxpayer within five (5) days after the date of such final adjournment.

History: L. 1969, ch. 437, § 2; March 10.

← Change this to read: "Notice of all changes of valuation of property shall within five (5) days be mailed to the director of property valuation."

Explanation: This would require county boards of equalization to mail to the PVD Director all adjustments in valuations - not just changes in an entire class or sub-class.

79-201d. Property exempt from taxation; animals or livestock, hay and silage, and farm storage and drying equipment. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. Horses less than 12 months old; cattle less than 12 months old; mules and asses less than 12 months old; sheep less than six months old; hogs less than six months old; and goats less than six months old.

Second. All hay and silage. The term "hay" shall include alfalfa, brome, clover, and prairie hays and all other grasses and plants which are harvested for forage. The term "silage" shall include corn, milo, sorghum and all other plants, cut, compressed and preserved by its own fermentation for fodder.

Third. All farm storage and drying equipment meeting eligibility requirements, as provided in Title 7, Chapter XIV, Subchapter B, Part 1474 of the Code of Federal Regulations and as in effect on December 31, 1977, for loans under the federal farm storage and drying equipment loan program, whether financed or not, which equipment is used exclusively for the storage or drying of corn, oats, barley, grain sorghum, wheat, rye, soybeans, flaxseed, rice, dry edible beans or sunflower seed, for any eight of the 10 calendar years next following the calendar year in which such equipment is acquired or construction thereof is completed. The provisions of this subsection shall apply to equipment acquired or the construction of which was completed during the calendar year 1977, or any year thereafter.

The provisions of this section shall apply to all taxable years commencing after December 31, 1981.

History: L. 1975, ch. 495, § 5; L. 1978, ch. 391, § 1; L. 1978, ch. 392, § 3; L. 1982, ch. 390, § 1; May 20.

Source or prior law:
79-209.

First Amendment.

The first proposed amendment would allow oxygen-limiting storage facilities, such as the Harvester Storage System, to be exempted when used for storing haylage or silage. At this time, the statute limits the exemption to those facilities used to store certain grains, which do not include haylage and silage. If the taxpayer states under oath that only the enumerated grains are being stored, the exemption is granted; however, if he admits to storing haylage or silage, the exemption must be denied.

haylage, silage

Provided however, that a "used" storage facility which would meet the eligibility requirements for a loan under this federal farm storage and drying equipment loan program but for the fact that it was not purchased from the Commodity Credit Corporation shall qualify for exemption notwithstanding its ineligibility for a federal loan under this program providing said storage facility was new when purchased or was a then qualifying "used" structure and acquired during or after calendar year 1977 and met all other exemption requirements in effect at that time.

Second Amendment.

This amendment results in an equitable treatment as to all grain storage facilities and effects the Legislative intent to promote the use of on the farm grain storage facilities. Under a strict reading of the exemption statute, which is required, used storage facilities which would qualify for exemption but for the fact that they were not purchased from the Commodity Credit Corporation (CCC) must be denied an exemption. Since the thrust of the statute exempting farm storage and drying equipment is to provide incentives to the farmers to purchase grain storage facilities which would enable him to store his harvested grain on his farm, there appears to be no point limiting the exemption to only those structures which were acquired new after 1977 when a equally suitable "used" bin serves the same purpose. These changes to the statute do not allow any used bin to qualify for exemption, but rather, limits it to those "used" grain bins that originally qualified for exemption upon their initial purchase, which no longer qualify because they were not purchased from CCC. The requirement that "used" storage facilities be purchased from CCC subverts the legislative intent since, for all practical purposes, CCC no longer has any "used" bins in Kansas.

12-110a. Purchase, repair or replacement of certain equipment, apparatus or machinery; no-fund warrants or bonds; procedure; limitations. (a) Whenever the governing body of any city, the board of county commissioners of any county or any township board shall deem that an emergency exists and that in order properly to protect and service or insure and provide for the health and convenience of the public it is necessary to purchase, repair or replace equipment, apparatus, ~~or~~ machinery necessary for the operation of law enforcement, for the disposal of refuse, for fire protection, for street, road and bridge construction, repair or maintenance, for sewer treatment, for water service or for ambulance service, and such city, county or township is without funds for the purchase, repair or replacement of such equipment, apparatus or machinery, the governing body of the city, the board of county commissioners of the county or the township board shall have power to issue and sell no-fund warrants or

strike "or" add a ","
after "machinery" add
"or capitol improvements"

This will allow for the constructing of buildings with no-fund warrants to protect the equipment necessary to render services to provide for the proper protection of the public.

general obligation bonds to raise revenue for such purchase or replacement in the manner as hereinafter provided and as provided by law and to levy taxes to pay such warrants or bonds. The governing body of such city shall by ordinance and the board of county commissioners or the township board shall by resolution declare that such emergency exists and that such purchase, repair or replacement of equipment, apparatus or machinery is necessary, and stating the maximum amount to be expended for such purchase, repair or replacement. Upon the passage and publication of such ordinance or resolution the governing body of the city, the board of county commissioners or the township board shall file an application with the state board of tax appeals, asking for permission to make such expenditure and issue warrants or bonds in payment thereof. Such application shall be in writing and shall contain a copy of the ordinance or resolution published and such other information as the governing body or board shall deem necessary adequately to inform the state board of tax appeals of the emergency existing.

If, upon hearing being had, the state board of tax appeals shall determine that such expenditure is necessary properly to protect and service or insure and provide for the health and convenience of the public the board shall issue its order in writing and under its seal authorizing the city, county or township to make such expenditure, and to issue warrants or bonds for the purpose of financing the same. The warrants may mature serially at such yearly dates as to be payable by not more than five tax levies. Bonds issued under the authority of this act shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state. Thereupon, the governing body of the city, the board of county commissioners or the township board shall have power to make such purchase, repair or replacement and to issue warrants or bonds and levy taxes to pay the same. All tax levies authorized by this section shall be in addition to all other tax levies authorized or limited by law and shall not be subject to, or within the aggregate tax levy prescribed by article 19 of chapter 79 of the Kansas Stat-

utes Annotated, or acts amendatory thereof or supplemental thereto.

(b) As used in this section, the phrase "township board" means the township trustee, the township clerk, and the township treasurer acting as a board.

History: L. 1947, ch. 108, § 1; L. 1957, ch. 85, § 1; L. 1963, ch. 70, § 1; L. 1969, ch. 70, § 1; L. 1979, ch. 51, § 1; L. 1980, ch. 60, § 1; March 31.

12-1744a. Issuance of revenue bonds; statements filed with board of tax appeals, contents; filing fee; annual informational report required. (a) At least ~~seven~~ days prior to the issuance of any revenue bonds, the city or county shall file a statement with the board of tax appeals of such proposed issuance containing the following information:

fifteen

Amending this provision to require a 15 day filing period will allow sufficient time to review the filing and supplement it, if necessary, without delaying the issuance of the Bonds.

(1) The name of the city or county proposing to issue the revenue bonds, the lessee, the guarantor, if any, the paying or fiscal agent, the underwriter, if any, and all attorneys retained to render an opinion on the issue;

(2) a legal description of any property to be exempted from ad valorem taxes, including the city or county in which the facility will be located;

(3) the appraised valuation of the property to be exempted from ad valorem taxes as shown on the records of the county as of the next preceding January 1;

(4) the estimated total cost of the facility showing a division of such total cost between real and personal property;

(5) if the facility to be financed is an addition to or further improvement of an existing facility the cost of which was financed by revenue bonds issued under the provisions of this act, the date of issuance of such revenue bonds, and if such facility or any portion thereof is presently exempt from property taxation, the period for which the same is exempt;

(6) the principal amount of the revenue bonds to be issued;

(7) the amount of any payment to be made in lieu of taxes;

(8) an itemized list of service fees or charges to be paid by the lessee together with a detailed description of the services to be rendered therefor;

(9) a reasonably detailed description of the use of bond proceeds, including whether they will be used to purchase, ac-

quire, construct, reconstruct, improve, equip, furnish, enlarge or remodel the facility in question;

(10) the proposed date of issuance of such revenue bonds.

(b) Any change in the information or documents required to be filed pursuant to subsection (a) which does not materially adversely affect the security for the revenue bond issue may be made within the fifteen-day period prior to issuance of the revenue bonds by filing the amended information or document with the board of tax appeals.

(c) Any notice required to be filed pursuant to the provisions of subsection (a) shall be accompanied by a filing fee, which shall be fixed by rules and regulations of the board of tax appeals, in an amount sufficient to defray the cost of reviewing the information and documents required to be contained in the notice.

(d) Information required to be filed by subsection (a) of this section shall be in addition to any filing required by K.S.A. 79-210 and amendments thereto.

(e) The board of tax appeals may require any information listed under subsection (a) deemed necessary, to be filed by a city or county concerning agreements entered into prior to the effective date of this act.

(f) The state board of tax appeals shall prepare and compile annually a report containing the information required to be filed pursuant to subsection (a) for each issuance of revenue bonds made pursuant to K.S.A. 12-1740 *et seq.* and amendments thereto. Such report shall be published in convenient form for the use and information of the legislature, taxpayers, public officers and other interested parties, and shall be available on January 10 of each year.

History: L. 1977, ch. 62, § 1; L. 1981, ch. 74, § 9; L. 1984, ch. 73, § 1; May 31.

201b. Same; hospitals, adult care homes, children's homes and housing for elderly persons. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric hospital as the same is defined by K.S.A. 59-2902, and amendments thereto, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital or psychiatric hospital purposes.

Second. All real property, and tangible personal property, actually and regularly used exclusively for adult care home purposes by an adult care home as the same is defined by K.S.A. 39-923, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for adult care home purposes.

Third. All real property, and tangible personal property, actually and regularly used exclusively for private children's home purposes by a private children's home as the same is defined by K.S.A. 75-3329, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for children's home purposes.

Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for

Explanation: In Re: Appeal of the Board of County Commissioners of Johnson County, Kansas, No. 56,668.

strike "assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto,"

No. 56,668

IN RE: APPEAL OF THE BOARD OF COUNTY
COMMISSIONERS OF JOHNSON COUNTY, KANSAS,

BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY

Appellant,

v.

EV. LUTHERAN GOOD SAMARITAN
SOCIETY-GOOD SAMARITAN TOWERS,

Appellee.

SYLLABUS BY THE COURT

1.

The exemption from ad valorem taxation granted by K.S.A. 79-201b *Fourth* for low income housing for elderly persons, the construction of which has been financed under the National Housing Act, is discussed and held applicable to an apartment building renting to both low income elderly persons and handicapped nonelderly persons pursuant to federal regulations for the operation of such facilities.

2.

Financial statements of individual tenants are not pertinent to a determination of whether a housing facility is entitled to an exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth*.

Appeal from Shawnee district court, E. NEWTON VICKERS, judge. Opinion filed January 26, 1985. Affirmed.

Bruce F. Landeck, assistant county counselor, argued the cause, and *Philip S. Harness*, assistant county counselor, was with him on the briefs for appellant.

Eugene T. Hackler, of Hackler, Londerholm, Corder, Martin & Hackler, Chartered, of Olathe, argued the cause, and *Robert C. Londerholm*, of the same firm, was with him on the brief for appellee.

The opinion of the court was delivered by

McFARLAND, J.: This is an appeal by the Johnson County Board of County Commissioners from a decision of the Kansas State Board of Tax Appeals granting a South Dakota not-for-profit corporation, Ev. Lutheran Good Samaritan Society, exemption from ad valorem taxation on a nine-story building in Olathe, Kansas, known as Olathe Towers. The exemption was granted based upon K.S.A. 79-201b *Fourth* and *Fifth*. The Board of County Commissioners appealed the decision to the Shawnee County District Court which, subsequently, affirmed the BOTTA decision. The matter is before us on the appeal therefrom by the Board of County Commissioners.

The following two issues are raised on appeal:

1. Did BOTTA and the district court err in holding Ev. Lutheran Good Samaritan Society was entitled to exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth* and *Fifth* on the property known as Olathe Towers?

2. Is the term "lowest feasible cost" utilized in K.S.A. 79-201b *Fifth* impermissibly vague?

Ordinarily, the proper procedure would be to determine the constitutional issue first. However, it is believed reversing the usual order is warranted by virtue of the issues raised.

The facts are essentially uncontroverted. The basic dispute raised in the first issue is whether, under the facts, applicant is entitled to exemption from ad valorem taxation.

Highly summarized, the facts of the use of the property are as follows. The improved real estate involved herein consists of 3.52 acres commonly described as 1425 East College Way, Olathe, Kansas. The property is owned by Good Samaritan Society, Inc., a South Dakota not-for-profit corporation. Ev. Lutheran Good Samaritan Society, Inc., is a North Dakota not-for-profit corporation founded in 1922 and is the parent corporation of the subsidiary, Good Samaritan Society, Inc. The boards of directors and operating policies of both corporations are identical. Both parent and subsidiary corporations have exemption letters from federal income taxation under § 501(c)(3) of the Internal Revenue Code, and both corporations are authorized to transact business in Kansas. The housing project on the subject property is operated by Ev. Lutheran Good Samaritan Society, Inc. (hereinafter referred to as "applicant"), and there is no challenge to said corporation being the proper entity to file the exemption application herein.

Situated on the subject real estate is a nine-story, 150-apartment building called "Olathe Towers." Direct loan financing of the construction was obtained by applicant from the Department of Housing and Urban Development (HUD) under § 202 of the National Housing Act in the amount of \$5,426,700.00. The forty-year mortgage provides for monthly payments of \$36,792.41. Sec. 202 of the National Housing Act provides in part that low income for the elderly projects are to operate in such a way that residents will not pay more than twenty-five per cent of their income for rent, based upon scheduled maximum annual income for

various sized families. Olathe Towers contains 141 one-bedroom apartments and eight two-bedroom apartments plus the resident manager's apartment. Neither meals nor medical services are included in the rentals charged. Occupancy began February 1, 1981. The exemption sought and granted is for 1981 and years subsequent thereto.

As of the date of the hearing before the BOTA (December 9, 1981) there was apparently one hundred per cent occupancy of the premises. The controversy herein rages over the occupancy of eight apartments. Four apartments are rented to elderly persons who do not qualify for federal rent subsidies--that is, their incomes are in excess of HUD guidelines for subsidization. Four other apartments are rented to handicapped individuals who are not elderly. The appellant Board of County Commissioners contends these eight rentals preclude the granting of exemption from ad valorem taxation.

Article 11, § 1, of the Kansas Constitution provides in pertinent part:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."

K.S.A. 79-201b provides in pertinent part:

"The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

. . . .

"*Fourth.* All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing.

"*Fifth.* All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit

corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing.

"The provisions of this section shall apply to all taxable years commencing after December 31, 1976."

Appellant calls our attention to our well-established case law which mandates that constitutional and statutory provisions exempting property from taxation are to be strictly construed. Illustrative of this principle is *National Collegiate Realty Corp. v. Board of Johnson County Comm'rs*, 236 Kan. 394, 690 P.2d 1366 (1984).

Essentially this issue breaks down into the following three areas of complaint:

1. Rental of four apartments to non-elderly handicapped persons precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth* as the property is not exclusively used for the housing of elderly persons;

2. Rental of apartments to four persons not qualifying for federal rent subsidies precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth*;

3. The "exclusive use" requirement contained in K.S.A. 79-201b *Fourth* and *Fifth* mandates that the property be exclusively used for purposes set forth in either *Fourth* or *Fifth* and a hybrid utilization destroys any exemption.

We shall first consider the argument relative to the legal effect of the presence of the physically handicapped non-elderly persons in the facility.

K.S.A. 79-201b grants exemption to property "used exclusively for housing for elderly persons having a limited or lower income, *assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto*"
(Emphasis supplied.)

12 U.S.C. § 1701g (1982) provides in part:

"(a)(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or handicapped families.

.

"(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans--

(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

(B) will assist in providing housing for elderly and *handicapped* families in neighborhoods and communities in which they are experiencing significant displacement due to public or private investment;

.

"(d) Definitions As used in this section--

"(1) The term 'housing' means structures suitable for dwelling use by elderly or *handicapped* families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

.

(4) The term 'elderly or *handicapped* families' means families which consist of two or more

persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is *handicapped*. A person shall be considered *handicapped* if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered *handicapped* if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this section." (Emphasis supplied.)

It is uncontroverted that the handicapped tenants in Olathe Towers meet the definition of handicapped persons contained in 12 U.S.C. § 1701q(d) (1982).

Olathe Towers was planned so that certain apartments were specifically designed for use by physically handicapped persons. It is true that elderly persons may be physically handicapped and

require usage of such specially designed facilities and inclusion thereof in the building design does not establish, by itself, that the building was designed to accommodate non-elderly handicapped persons. Applicant contends it is required by amendments to the National Housing Act to accept as tenants handicapped persons as defined by 12 U.S.C. § 1701q(a) (1982) and that the legal effect of this is to broaden the exemption granted in K.S.A. 79-201b *Fourth*. This point has merit.

★ Prior to 1964 the National Housing Act provided direct loan financing for construction of homes for low income elderly persons. Significant changes occurred in 1964 when the act was amended by striking out the term "elderly families and elderly persons" wherever it appeared and substituting therefore "elderly or handicapped families." Numerous amendments and supplements to the Act occurred in the same legislation to broaden eligibility for federally financed housing to include handicapped as well as elderly families. See National Housing Act, ch. 847, 48 Stat. 1246 (1934) (codified at 12 U.S.C. § 1701 *et seq.* [1982]) amended by the Housing Act of 1964, Pub. L. No. 88-560, Title II, § 201 *et seq.*, 78 Stat. 783 *et seq.* (1964). The previously cited 12 U.S.C. § 1701q (1982) was a part of the 1964 amendments to the Act.

Therefore, the handicapped residents of Olathe Towers are there by virtue of federal legislation authorizing their presence in such facilities constructed by direct loan from National Housing Act funds. Appellant does not challenge this fact. Rather, appellant argues that K.S.A. 79-201b *Fourth* states exemption from ad valorem taxation shall be granted for such federally financed facilities *used exclusively* for low income elderly and, hence, under strict construction, the presence of the handicapped persons

therein establish applicant is not entitled to the exemption. We do not agree. Appellant's position ignores the provision of K.S.A. 79-201b *Fourth* which states:

"*Fourth*. All real property . . . actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the *national housing act and acts amendatory thereof and supplemental thereto*" (Emphasis supplied.)

Appellant's rigid interpretation of K.S.A. 79-201b *Fourth* would effectively destroy the exemption. The National Housing Act, by acts amendatory and supplemental thereto, grants eligibility for residence in such facilities to handicapped persons. The clear intent of K.S.A. 79-201b *Fourth* was to exempt such public housing from ad valorem taxation. The "acts amendatory and supplemental thereto" language of K.S.A. 79-201b *Fourth* clearly shows that exemption is to be granted to facilities constructed under auspices of the National Housing Act as it originally existed and as it might be subsequently amended or supplemented.

Appellant additionally argues that the exemption is limited to facilities "used exclusively" for low income elderly on the basis that K.S.A. 79-201b *Fourth* was enacted in 1975--subsequent to the 1964 amendments to the National Housing Act previously discussed. Appellant reasons that inasmuch as handicapped persons had already been granted eligibility to live in such facilities by federal legislation, then, if the exemption was intended to

include such persons, the legislature would have amended K.S.A. 79-201b *Fourth* to specifically include handicapped persons. We do not agree. The legislative history of K.S.A. 79-201b *Fourth* clearly shows it was a part of a general codification of ad valorem tax exemption laws. See 1975 Session Laws of Kansas, ch. 495 and Minutes of the House Committee on Assessment and Taxation, March 12, 1975.

The second aspect of this issue is whether the presence of four elderly tenants on the premises whose incomes are above federal guidelines for rent subsidies precludes exemption from ad valorem taxation. The battle on this question has been fought on rather curious terrain. The BOTA and the district court granted the applicant exemption on the basis of K.S.A. 79-201b *Fourth* and *Fifth*. Section *Fourth* grants the exemption to facilities for low income elderly (and handicapped, as previously determined) persons where the construction of the facility has been financed by the National Housing Act. Section *Fifth* grants exemption to housing facilities for low income elderly persons where:

"charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost."

Although not clearly spelled out in either the BOTA or district court opinions herein, the granting of the exemption in both K.S.A. 79-201b *Fourth* and *Fifth* apparently comes about from a conclusion that the handicapped residents qualify under *Fourth* and the non-rent subsidized elderly residents qualify under *Fifth*. This conclusion is consistent with the arguments

of the parties herein. Bringing K.S.A. 79-201b *Fifth* into the fray spawns the previously referred to arguments relative to the constitutionality of *Fifth* and the propriety of hybridizing exemptions. We do not believe applicant's exemption requires consideration of K.S.A. 79-201b *Fifth*.

Let us look closely at K.S.A. 79-201b *Fourth*, repeated at this point for simplification:

"Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, *assistance for the financing of which was received under the national housing act* and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing."

(Emphasis supplied.)

To what does the term "assistance for the financing of which was received under the national housing act" refer? Note use of "was" received. Clearly this can refer only to construction

costs, as rent subsidies are ongoing items of expenditure. The use of the term "financing," again, indicates construction as opposed to rent subsidies of residents. Yet the case is argued along the lines that the presence of elderly residents whose rents are not federally subsidized and who personally pay the full rent somehow requires the applicant to seek exemption under K.S.A. 79-201b *Fifth*. We do not agree.

The exemption provided for in K.S.A. 79-201b *Fifth* requires the facility to be operated on a below cost or on a "lowest feasible cost" basis. Nothing comparable is found in *Fourth*. Why? The answer is simple. It is common knowledge that when construction of public housing for the elderly (and handicapped) is financed through the National Housing Act, the operation of the facility is subject to ongoing federal control. Resident eligibility, amount of rent to be charged, amount of rent subsidy, operational expenses, etc., are the subjects of a plethora of federal statutes and regulations. To gain the tax exemption set out in *Fourth*, an applicant does not need to show qualifying operating costs--only that it is a qualifying not-for-profit corporation operating a National Housing Act facility for the elderly (and qualified handicapped). Any such operation not in compliance with the mass of regulations is subject to penalties including the loss of federal rent subsidies. The federal government can effectively shut down the facility for noncompliance. The legislature in enacting K.S.A. 79-201b *Fourth* obviously relied upon federal regulations to assure the goals and public purposes of the program designed to provide adequate housing for low income elderly and handicapped persons have been and continue to be met. The presence of the four elderly residents in Olathe Towers not receiving rent subsidies is a matter between applicant, as operator of the facility, and HUD. Burrowing through

the financial statements of the elderly residents of Olathe Towers is neither required nor pertinent to a determination of applicant's eligibility for tax exemption under K.S.A. 79-201b *Fourth*.

We therefore conclude Olathe Towers is entitled to exemption from ad valorem taxation based upon K.S.A. 79-201b *Fourth*. By virtue of this determination, other issues raised need not be addressed.

The judgment is affirmed.

tion; farm machinery and equipment. The following described property, to the extent specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

All farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used exclusively in farming or ranching operations. The term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as the terms are defined by K.S.A. 8-126 and amendments thereto.

The provisions of this section shall apply to all taxable years commencing after December 31, 1982.

8-126. Definitions. The following words and phrases when used in this act shall have the meanings respectively ascribed to them herein:

(a) "Vehicle." Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle." Every vehicle, other than a motorized bicycle, which is self-propelled.

(c) "Truck." A motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.

(d) "Motorcycle." Every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "tractor" as herein defined.

(e) "Truck tractor." Every motor vehicle designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle or load so drawn.

(f) "Farm tractor." Every motor vehicle designed and used as a farm implement power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

(g) "Road tractor." Every motor vehicle designed and used for drawing other vehicles, and not so constructed as to carry any load thereon independently, or any part of the weight of a vehicle or load so drawn.

(h) "Trailer." Every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(i) "Semitrailer." Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

(j) "Pole trailer." Any two-wheel vehicle used as a trailer with bolsters that support the load, and do not have a rack or body extending to the tractor drawing the load.

(k) "Specially constructed vehicle." Any vehicle which shall not have been originally constructed under a distinctive name, make, model or type, or which, if originally otherwise constructed shall have been materially altered by the removal of essential parts, or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

(l) "Foreign vehicle." Every motor vehicle, trailer or semitrailer which shall be brought into this state otherwise than in ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

(m) "Person." Every natural person, firm, partnership, association or corporation.

(n) "Owner." A person who holds the legal title of a vehicle, or in the event vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this act.

(o) "Nonresident." Every person who is not a resident of this state.

(p) "Manufacturer." Every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

(q) "New vehicle dealer." Every person actively engaged in the business of buying, selling or exchanging new motor vehicles, mobile homes, travel trailers, trailers or vehicles and who holds a dealer's contract therefor from a manufacturer or distributor and who has an established place of business in this state.

(r) "Used vehicle dealer." Every person actively engaged in the business of buying, selling or exchanging used vehicles, and having an established place of business in this state and who does not hold a dealer's contract for the sale of new motor vehicles, mobile homes, travel trailers, trailers or vehicles.

(s) "Highway." Every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel. The term "highway" shall not be deemed to include a roadway or driveway upon grounds owned by private owners, colleges, universities or other institutions.

(t) "Department" or "motor vehicle department" or "vehicle department." The division of vehicles of the department of revenue, acting directly or through its duly authorized officers and agents.

(u) "Commission" or "state highway commission." The director of vehicles of the department of revenue.

(v) "Manufactured home." A structure, transportable in one or more sections which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet and which is built on a permanent chassis, and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. When the term mobile home is used in article 1 of chapter 8 of Kansas Statutes Annotated it shall be synonymous with and means the same as manufactured home.

(w) "Travel trailer." Every vehicle without motive power designed to be towed by a motor vehicle constructed primarily for recreational purposes and measuring eight feet or less in width.

(x) "Passenger vehicle." Every motor vehicle, as herein defined, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.

(y) "Self-propelled farm implement." Every farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design.

(z) "Farm trailer." Every trailer as defined in subsection (h) of this section and every semitrailer as defined in subsection (i) of this section, designed and used primarily as a farm vehicle.

(aa) "Motorized bicycle." Every device having two tandem wheels which may be propelled by either human power or helper motor, or by both, and which has: A motor which produces not more than 3.5 brake horsepower; a cylinder capacity of not more than 50 cubic centimeters; an automatic

79-1436a. Same, classification of property by director; county assessor or county clerk to report classification of property sold. The director of property valuation in carrying out his or her duties under the provisions of this act and the act of which this act is amendatory shall provide for classification of properties which are sold, transferred or contracted to be sold or transferred within the classification prescribed by K.S.A. 79-503 and amendments thereto. The director of property valuation shall require the county assessor or county clerk acting in the capacity of county assessor to show on forms provided therefor, the classification and subclassification, if any, of the property sold and the classification and subclassification, if any, after the transfer is effected.

strike "K.S.A. 79-503"

insert "K.S.A. 79-1459"

79-1437. Same; sales price and ratios to be computed by director; annual report and publication of ratios; notification of board of county commissioners quarterly. Upon securing information of real estate sales from the counties, the director shall determine, as nearly as possible, the sale price of each tract or piece of real estate and the ratio of the assessed valuation to the sale price. The director shall determine the average ratio of all sales of urban real estate and rural real estate and for each classification of property and for all classes combined in each county and unified school district for the twelve-month period ending on August 31 of such year. The director shall quarterly notify the board of county commissioners of each county and the school board of each unified school district of the ratios determined for such county or school district for the preceding quarter. In addition, the director shall determine the average ratio of all sales in all counties and unified school districts of the state for such twelve-month period. In determining the ratio of sales as required in this section, the director of property valuation shall, in all sales of property in which there is to be a change in the classification or subclassification of the property, place such sale in the proper classification or subclassification, and such sale resulting in a change of classification shall not be used in determining the ratio of the prior classification. Ratios for each twelve-month period shall be published annually by the director not later than December 1 next following the close of such period, in convenient form for the use and information of the legislature, taxpayers and other interested parties and public officers. The annual report of the director of property valuation published as required by this section shall include reports of county and unified school district ratios of urban real estate and rural real estate, ratios for the classifications of property established by K.S.A. 79-503 and amendments thereto and ratios for a combination of all classes of property within each county and unified school district. In addition thereto, such report shall include reports of state-wide average ratios of sales of urban real estate, sales of rural real estate and of all sales in all counties and unified school districts of the state for the period hereinbefore prescribed.

strike "K.S.A. 79-503"

insert "K.S.A. 79-1459"

9-1-15. County appraisal and assessment; annual determination of compliance; publication of list of counties; redetermination; rules and regulations; limitation on requirement to reappraise. The director of property valuation shall examine the tax assessment and appraisal of taxable property of the various counties prior to September 15 each year. On or before such date, said director shall publish a list of those counties which he or she finds to be in substantial compliance with the requirements of law to appraise taxable property of all counties at fair market value in money as defined by K.S.A. 79-503. Such list shall also specify those counties which are not in substantial compliance with said act and every county shall be named in one or the other parts of such list. After such list has been initially published, the board of county commissioners of any county may petition the director of property valuation to reconsider his or her determination as published in such list. Said petition shall be made in compliance with rules and regulations adopted by the secretary of revenue as to the form and contents of any such petition. Such rules and regulations shall provide for a redetermination, in every case, after the final completion of any countywide reappraisement. The director of property valuation may make a redetermination as to any county whether the same is petitioned for or not.

strike "K.S.A. 79-503"
instert "K.S.A. 79-503a"

79-1-167. Transmission of completed personal property appraisals to county clerk; when and contents. Commencing on January 1 of each year, the county appraiser shall transmit the taxable personal property appraisals to the county clerk continually upon the completion thereof. Upon completion of transmission of such appraisals to the county clerk, on or before the last business day of April each year, the county appraiser shall deliver a document certifying that such appraisals constitute the complete appraisal rolls for personal property.

The taxable personal property roll shall consist of all personal property forms rendered by taxpayers to the county appraiser and any other records prepared by the county appraiser for the listing and appraisal of taxable personal property located within the county.

The exempt personal property roll shall include all personal property that is exempt from ad valorem taxation except those specific types of property set forth in K.S.A. 79-201c. The exempt personal property roll shall consist of all exempt personal property forms rendered by taxpayers to the county appraiser and other records prepared by the county appraiser for the listing and appraisal of all exempt personal property within the county.

after K.S.A. 79-201c insert
"and K.S.A. 79-201j"

Explanation: This is merely to bring to the committees attention the problem caused by K.S.A. 79-213(n) which exempts farmers and ranchers from ever filing for either the initial claim for exemption or the annual claim.

K.S.A. 79-1467 requires the county appraiser to list equipment on the exempt property roll which is never reported to him.

79-1701. Correction of clerical errors by county clerk. The county clerk shall, prior to November 1, correct the following clerical errors in the assessment and tax rolls for the current year, which are discovered prior to such date:

(a) Errors in the description or quantity of real estate listed;

(b) Errors in extensions of values or taxes whereby a taxpayer is charged with unjust taxes;

(c) Errors which have caused improvements to be assessed upon real estate when no such improvements were in existence;

(d) Errors whereby improvements located upon one tract or lot of real estate have been assessed as being upon another tract or lot;

(e) Errors whereby taxes have been charged upon property which the state board of tax appeals has specifically declared to be exempt from taxation under the constitution or laws of the state;

(f) Errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county; and

strike "and"

(g) Errors whereby the assessment of either real or personal property has been assigned to a taxing district in which the property did not have its taxable situs.

Strike ".", insert "; and"
(h) Errors whereby the values or taxes are understated as a result of a mistake on the part of the county.

History: L. 1913, ch. 322, § 1; L. 1917, ch. 321, § 1; R.S. 1923, 79-1701; L. 1939, ch. 319, § 1; L. 1943, ch. 291, § 1; L. 1975, ch. 496, § 1; July 1.

Research and Practice Aids:
Taxation—164.
C.J.S. Taxation § 517.

Law Review and Bar Journal References:
1955-56 survey of taxation law, Leslie T. Tupy, 5 K.L.R. 324, 330 (1956).
"Kansas Ad Valorem Property Tax Relief—A Current Review," Bruce F. Landeck, 49 J.K.B.A. 269, 272, 273 (1980).

CASE ANNOTATIONS

Annotations to R.S. 1923, 79-1701 and prior laws:

1. Duty of county clerk to correct and extend proper levies. *Board of Education v. Barrett*, 101 K. 568, 570, 167 P. 1068.
2. Recovery back of invalid taxes not barred by remedies provided herein. *Salthouse v. McPherson County*, 115 K. 668, 224 P. 70.
3. Property listed in wrong school district; taxes recoverable. *School District No. 8 v. Board of Education*, 115 K. 806, 224 P. 892; *State, ex rel., v. Williams*, 139 K. 599, 601, 611, 32 P.2d 481.
4. County board may defend against order of tax commission as being erroneous. *Robinson v. Jones*, 119 K. 609, 611, 240 P. 957.
5. Held suit may be had for recovery of illegal tax in addition to this section. *Bank of Holyrood v. Kottmann*, 132 K. 593, 595, 296 P. 357.
6. Cited in discussing statutory procedure for making tax valuations and levies. *State, ex rel., v. Riley County Comm'rs*, 142 K. 388, 391, 47 P.2d 449.
7. Cited; personal property tax lien on real estate equivalent of judgment. *Kucera v. State*, 160 K. 624, 628, 164 P.2d 115.
8. Applied; Masonic temple not exempt from taxation as charitable institution. *Clements v. Ljungdahl*, 161 K. 274, 275, 167 P.2d 603.

- Annotations to L. 1943, ch. 291, § 1:
9. Mandamus action proper where removal of property from tax rolls sought. *A.T.&S.F. Hospital Ass'n v. State Commission of Revenue and Taxation*, 173 K. 312, 313, 246 P.2d 299.
 10. Tax commission's order exempting property held void; failure to appeal hereunder, effect. *State, ex rel., v. Lawrence Woman's Club*, 178 K. 308, 309, 313, 285 P.2d 770.
 11. Finding by board of tax appeals that office building was not exempt from taxation; relief denied. *Shriver v. Board of County Commissioners*, 189 K. 548, 550, 370 P.2d 124.
 12. Mentioned in holding that district court had no authority to hear appeal of tax grievance from board of tax appeals under either 60-2101(d) or 74-2426. *In re Lakeview Gardens, Inc.*, 227 K. 161, 164, 605 P.2d 576.
 13. Taxpayer's grievance not remedial under statute; alternative methods of relief discussed. *Wirt v. Esrey*, 233 K. 300, 316, 317, 662 P.2d 1238 (1983).

This will allow the correction of clerical errors by county officials resulting in an understatement of value or taxes. This will correct the problem addressed by the Court of Appeals, in the Midland Industries case, wherein the Court held that Sedgwick County could not increase an assessment or taxes resulting from an error by a county official. This defines a mistake by a county official as a "clerical error."

79-1701a. Correction of clerical errors by board of county commissioners; refund, cancellation or credit of overpayments of taxes based on errors. Any taxpayer, the county appraiser or the county clerk shall, on their own motion, request the board of county commissioners to order the correction of the clerical errors in the appraisal, assessment or tax rolls as described in K.S.A. 79-1701. The board of county commissioners of the several counties are hereby authorized to order the correction of clerical errors, specified in K.S.A. 79-1701 in the appraisal, assessment or tax rolls for the current year and the immediately preceding two years during the period on and after November 1 of each year. If a county treasurer has collected and distributed the property taxes of a taxpayer and it shall thereafter be determined that the tax computed and paid was based on an erroneous assessment due to a clerical error which resulted in an overpayment of taxes by the taxpayer, and such error is corrected under the provisions hereof then the county commissioners may direct a refund in the amount of the overpayment from tax moneys collected during the current year and approve a claim therefor. If all or any portion of the taxes on such property remain unpaid, the board of county commissioners shall cancel that portion of such unpaid taxes which were assessed on the basis of the error which is being corrected. In lieu of taking such a refund the taxpayer may, at the taxpayer's option, be allowed a credit on the current year's taxes in the amount of the overpayment for the previous year.

History: L. 1968, ch. 261, § 1; L. 1975, ch. 496, § 2; L. 1982, ch. 391, § 37; July 1.

CASE ANNOTATIONS

1. Mentioned in holding that district court had no authority to hear appeal of tax grievance from board of tax appeals under either 60-2101(d) or 74-2426. *In re Lakeview Gardens, Inc.*, 227 K. 161, 164, 605 P.2d 576.

2. Taxpayer's grievance not remedial under statute; alternative methods of relief discussed. *Wirt v. Esrey*, 233 K. 300, 316, 662 P.2d 1238 (1983).

In the event the error results in an understatement of value or taxes as a result of a mistake on the part of the county, the board of county commissioners of the several counties are hereby authorized to correct said error and order an additional assessment or tax bill, or both, to be issued.

This will allow the correction of clerical errors by county officials resulting in an understatement of value or taxes. This will correct the problem addressed by the Court of Appeals in the Midland Industries case wherein the Court held that Sedgwick County could not increase an assessment or taxes resulting from an error by a county official. This allows the board of county commissioners to correct this error in the current year or the next preceding 2 years.

79-1702. Cancellation or refund of taxes by board of tax appeals, when; cancellation and abatement of certain taxes on property of the state, municipalities or exempt institutions; property assessed in more than one county; powers of board. If any taxpayer or any municipality or taxing district shall have a grievance not remediable under the provisions of K.S.A. 79-1701 or 79-1701a, or amendments thereto, or which was remediable thereunder and reported to the proper official or officials within the time prescribed but which has not been remedied by such official or officials, such grievance may be presented to the state board of tax appeals and if it shall be satisfied from competent evidence produced that there is a real grievance, it may direct that the same be remedied either by canceling the tax if uncollected together with all penalties charged thereon, or if the tax has been paid, by ordering a refund of the amount found to have been unlawfully charged and collected.

In all cases where property has been acquired by the state, a political subdivision or an institution exempt from general property taxation, the general property tax for all the years prior to 1975 that are unpaid on the taking effect of this act shall be cancelled and abated upon proper application hereunder.

In all cases where the identical property owned by any taxpayer has been assessed for the current tax year in more than one county in the state, said board is hereby given authority to determine which county is entitled to the assessment of the property and to charge legal taxes thereon, and if the taxes have been paid in a county not entitled thereto, said board is hereby empowered to direct the authorities of the county which has so unlawfully collected the taxes to refund the same to the taxpayer with all penalties charged thereon.

No tax grievance shall be considered by the board of tax appeals unless the same is filed within three (3) years from the date the tax would have become a lien on real estate, except that the board shall have the authority, upon a finding of excusable neglect or undue hardship, to waive the limitations period, and that in no event shall the board order a refund of taxes, pursuant to the authority granted herein, that extends back more than three (3) years from the date of the most recent tax year.

Errors committed in the valuation and assessment process that are not specifically enumerated in K.S.A. 79-1701 shall be remediable only under the provisions of K.S.A. 79-2005.

History: L. 1913, ch. 322, § 2; L. 1917, ch. 321, § 2; R.S. 1923, 79-1702; L. 1943, ch. 291, § 2; L. 1961, ch. 440, § 1; L. 1970, ch. 384, § 1; L. 1975, ch. 496, § 3; L. 1980, ch. 311, § 2; July 1.

Research and Practice Aids:
Taxation 466.
C.J.S. Taxation §§ 485, 487.

Law Review and Bar Journal References:

- Case in annotation No. 17 below discussed in 1956-57 surveys of Kansas law, Paul E. Wilson, 6 K.L.R. 140, 145 (1957); Leslie T. Tupy, 6 K.L.R. 251, 252, 253 (1957).
- Cases in annotation No. 20 below discussed in 1959-61 survey of taxation law, Leslie T. Tupy, 10 K.L.R. 305, 311, 312 (1961).
- Survey of law of taxation, Leslie T. Tupy, 12 K.L.R. 333, 342 (1963).
- "Survey of Kansas Law: Taxation," 29 K.L.R. 571, 576 (1981).

CASE ANNOTATIONS

Annotations to R.S. 1923, 79-1702:

- 1 Remedy hereunder cumulative; action may be maintained for invalidity. *Railway Co. v. Greenwood County*, 104 K. 818, 821, 180 P. 785.
- 2 Appeal to tax commission not exclusive remedy where tax invalid. *Salthouse v. McPherson County*, 115 K. 668, 670, 224 P. 70; *Robinson v. Jones*, 119 K. 609, 11 240 P. 957; *Atchison, T. & S.F. Rly. Co. v. Montgomery County Comm'rs*, 121 K. 428, 430, 247 P. 442.
- 3 Remedies for correction of errors not exclusive

In all cases where an error results in an understatement of values or taxes as a result of a mistake on the part of the county, the board of tax appeals, if it shall be satisfied from competent evidence produced that there is an understatement as a result of a clerical error, may order an additional assessment or tax bill, or both, to be issued so that the proper value of the property in question is reflected. No increase shall be ordered to correct such error that extends back more than three (3) years from the date of the most recent tax year.

This will allow the correction of clerical errors by county officials resulting in an understatement of value or taxes. This will correct the problem addressed by the Court of Appeals in the Midland Industries case wherein the Court held that Sedgwick County could not increase an assessment or taxes resulting from an error by a county official. This allows the board of tax appeals to correct this error when the county commissioners do not have authority to do so, but does not allow the correction beyond 3 years from the most recent tax year.

ATTACHMENT 15 2/8/85

74-2437. Powers and duties of state board. The state board of tax appeals shall have the following powers and duties:

(a) To hear appeals from the director of taxation and the director of property valuation on rulings and interpretations by said directors, except where different provision is made by law;

(b) to hear appeals from the director of

property valuation on the assessment of state assessed property;

(c) to adopt rules and regulations relating to the performance of its duties and particularly with reference to procedure before it on hearings and appeals; and

(d) such other powers as may be prescribed by law.

History: L. 1957, ch. 429, § 5; L. 1972, ch. 342, § 79; July 1.

Cross References to Related Sections:

Additional powers of board, see 74-2439.

Research and Practice Aids:

Hatcher's Digest, Administrative Law § 1; Boards & Commissions § 1.

Law Review and Bar Journal References:

Director of revenue's right of appeal discussed in survey of law of taxation, Leslie T. Tupy, 12 K.L.R. 333, 334 (1963).

CASE ANNOTATIONS

1. Cited; 74-2426 applicable only to matters appealed from director of revenue or director of property valuation. *City of Kansas City v. Jones & Laughlin Steel Corp.*, 187 K. 701, 704, 360 P.2d 29; *Union Pacific Railroad Co. v. Sloan*, 188 K. 231, 232, 233, 361 P.2d 889.

2. Mentioned; board of tax appeals is a higher administrative agency than the director of revenue, and the highest administrative agency of the Kansas income tax act. *Sprague Oil Service v. Fadely*, 189 K. 23, 26, 28, 367 P.2d 56.

3. Mentioned; tax is upon sale of admissions not participation in activities. *Grauer v. Director of Revenue*, 193 K. 605, 607, 396 P.2d 260.

4. Applied; valuation and assessment of utility for ad valorem tax purposes by board upheld; court's order erroneous. *Mobil Pipeline Co. v. Rohmiller*, 214 K. 905, 906, 918, 919, 522 P.2d 923.

(d) To require any party to obtain legal counsel, when, in the sole discretion of the Board, it is in the best interest of the party concerned to be represented before the Board.

strike "d" and insert "e"

This will allow all parties to be adequately represented before the Board in those cases which may have an affect on taxpayers other than those presently appearing before the Board.

74-2439. Additional powers of state board. Except as otherwise provided by law, the state board of tax appeals shall have the following powers and duties:

(a) Constituting, sitting and acting as the state board of equalization as provided in K.S.A. 79-1409;

(b) authorizing the issuance of emergency warrants by taxing districts, as provided in article 29 of chapter 79 of Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, and authorizing the issuance of warrants by cities or counties under statutes of this state;

(c) authorizing increases in tax levies by taxing districts, as provided in article 19 of chapter 79 of Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto;

(d) correcting errors and irregularities under the provisions of article 17 of chapter 79 of Kansas Statutes Annotated; and

(e) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005.

History: L. 1957, ch. 429, § 6; L. 1958, ch. 31, § 2 (Special Session); L. 1959, ch. 372, § 3; L. 1972, ch. 342, § 81; July 1.

Cross References to Related Sections:

General powers and duties of board, see 74-2437.

Research and Practice Aids:

Hatcher's Digest, Administrative Law § 1.

CASE ANNOTATIONS

1. Cited; 74-2426 applicable only to matters appealed from director of revenue or director of property valuation. *City of Kansas City v. Jones & Laughlin*

Steel Corp., 187 K. 701, 703, 360 P.2d 29; *Union Pacific Railroad Co. v. Sloan*, 188 K. 231, 232, 233, 361 P.2d 889.

2. Where state board of equalization approves assessment it is essential party to action to enjoin tax collection. *Builders, Inc. v. Board of County Commissioners*, 191 K. 379, 380, 383, 381 P.2d 527.

3. Cited in determining action commenced under 79-2005. *Cities Service Oil Co. v. Kronewitter*, 199 K. 228, 232, 428 P.2d 804.

4. Applied; valuation and assessment of public utility by state board under 79-5a04 approved. *Mobil Pipeline Co. v. Rohmiller*, 214 K. 905, 920, 522 P.2d 923.

5. Mentioned in holding that district court had no authority to hear appeal of tax grievance from board of tax appeals under either 60-2101(d) or 74-2426. *In re Lakeview Gardens, Inc.*, 227 K. 161, 165, 605 P.2d 576.

(f) To require any party to obtain legal counsel, when, in the sole discretion of the Board, it is in the best interest of the party concerned to be represented before the Board.

This will allow all parties to be adequately represented before the Board in those cases which may have an affect on taxpayers other than those presently appearing before the Board.

79-2938. No-fund warrants for shortages in revenue, when; procedure; limitation of amount; notice and hearing; protests; tax levy to pay. Whenever during the current budget year it becomes apparent to the governing body of any taxing district that because of unforeseen circumstances the revenues of the current budget year for any fund are insufficient to finance the adopted budget of expenditures for such fund for the current budget year, the governing body may make application to the board of tax appeals for authority to issue warrants to pay for such budgeted expenditures. The application shall be signed and sworn to, and shall have a majority approval of any governing body composed of three (3) members or less, and a three-fourths majority of any governing body composed of more than three (3) members. The application shall reveal the following: (1) The circumstances which caused the shortage in revenues; (2) a copy of the budget adopted for the current budget year; and (3) a detailed statement showing why the budget of expenditures cannot be reduced during the remainder of the current budget year so that additional revenue will not be necessary. If the board of tax appeals shall find that the evidence submitted in writing in support of the application shows:

or budget errors

This will allow the issuance of no-fund warrants when there is insufficient revenue for reasons other than "unforeseen circumstances." For example, when there is an error in the budgeting process that can no longer be corrected at the local level, and there are not unforeseen circumstances, the Board could authorize no-fund warrants to allow the governing body sufficient revenues to provide the necessary services.

- (a) That the adopted budget of revenues balanced with the adopted budget of expenditures;
- (b) that the governing body exercised prudent judgment at the time of preparing the budget of revenues; and
- (c) that the budget of expenditures cannot be reduced during the remainder of the current budget year so that additional revenue will not be necessary, the board of tax appeals is empowered to authorize the issuance of warrants for the payment of that portion (in dollars) of the unfinanced budget of expenditures which the board of tax appeals deems necessary. The amount of such warrants for any fund of any taxing district shall not exceed twenty-five percent (25%) of the amount of money that could

have been raised by levy for said fund under the individual fund limit for the payment of expenses for the current budget year, nor shall the amount of such warrants for any fund, of any taxing district exceed twenty-five percent (25%) of the amount of money that could have been raised by levy for said fund under the limitation placed upon said fund by reason of the aggregate limit, and in no case shall the total amount of such warrants for all funds exceed twenty-five percent (25%) of the amount of money that could have been raised by levy within the aggregate limit prescribed by law for said taxing district for the payment of expenses of the current budget year. The limitations of the foregoing provision shall have no application to funds for payment of general obligation bonds and interest thereon.

No order for the issuance of such warrants shall be made without a public hearing before the board of tax appeals and notice of such hearing shall be published in two (2) issues of a paper of general circulation within the district applying for such authority at least ten (10) days prior to such hearing. The notice shall be in such form as the board of tax appeals shall prescribe, and the expense of such publication shall be borne by the taxing district making application. Any taxpayer interested may file a written protest against such application. Any member of the governing body of the taxing district making an application hereunder may appear and be heard in person at such hearing in support of the application. The governing body of such taxing district may also be represented by an attorney at such hearing. The board of tax appeals shall keep written records of all hearings and it shall make no order for the issuance of such warrants until it shall make a written finding in

7005. Protesting payment of taxes; written statement of grounds; proceedings or recovery of protested taxes, limitations; refund of protested taxes; taxing districts authorized to issue no-fund warrants; levy of taxes for payment of no-fund warrants; levy exempt from tax lid. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 31, no later than December 20, to file a written statement with the county treasurer, on forms approved by the director of property valuation and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes.

(b) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(c) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(d) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such protest to the governing body of the taxing district making the levy being protested.

(e) Within 30 days after filing the written statement of protest, the protesting taxpayer must file an application for refund with the state board of tax appeals, on forms approved by the state board of tax appeals and provided by the county treasurer, together with a copy of the written statement of protest.

(f) Upon receipt of the application for refund, the board shall docket the same and notify the taxpayer and the county treasurer of such fact. In addition thereto if the grounds of such protest is that the valuation or assessment of the property is illegal or void the board shall notify the county appraiser thereof.

(g) After examination of the application for refund, the board shall fix a time and place for hearing, unless waived by the interested parties in writing, and shall notify the taxpayer and the county treasurer of the time and place so fixed. The county treasurer shall then notify the clerk, secretary or residing officer of the governing body of any taxing district affected by such application for refund, of the time and place for hearing. In addition thereto if the grounds of such protest is that the valuation or assessment of the property is illegal or void the board shall notify the county appraiser thereof.

(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the application with the board.

(i) When a determination is made as to the merits of an application for refund, the board shall enter its order thereon and give notice of the same to the taxpayer, county treasurer, county appraiser, county attorney, county counselor and the appropriate taxing districts, by mailing to each a certified copy of its order. The date of an order, for purposes of filing an appeal to the district court, shall be the date of certification.

(j) If a protesting taxpayer fails to file such application for refund with the board within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(k) In the event the board orders that a refund be made and no appeal is taken from

Explanation #1: This would require the county to be represented by counsel as in K.S.A. 79-213.

Explanation #2: This would relieve the Board from the obligation of mailing out copies of protest orders to all affected taxing districts, i.e., library districts, water districts, sewer districts, etc. The County treasurer has to notify them of the adjusted valuation anyway.

#1

(h) after board, insert; "In all instances where the board sets a request for hearing, the county shall be represented by its county attorney or county counselor."

#2

(i) strike "and the appropriate taxing districts" insert after "order"; "The county treasurer shall notify all of the remaining affected taxing districts."

2/8/85