

SESSION OF 2004

## SUPPLEMENTAL NOTE ON SENATE BILL NO. 478

As Amended by Senate Committee on  
Assessment and Taxation

### **Brief\***

SB 478, as amended, would classify all wireless communication towers, broadcast towers, antenna and relay sites, except for public utility property, as tangible personal property for property tax purposes. These towers, antenna and relay sites would be defined as commercial and industrial machinery and equipment for classification purposes.

The exempted public utility properties, which are enumerated in KSA 79-5a01, include railroads holding a material interest in Kansas; telegraphic and telephonic message transmissions; the transportation or distribution of natural gas, oil or other commodities in pipelines or underground natural gas storage; electric power generation, conduction or distribution; water transmission if for profit or subject to State Corporation Commission regulation; and transportation of cargo by any vessel used on any navigable watercourse located in or bordering upon the state.

The bill would apply to all taxable years beginning with 2003.

### **Background**

In Laws 1997, ch. 126, §37, the Kansas Legislature created KSA 79-430 to address issues arising from the proliferation of wireless communication towers in Kansas.

Effective for tax years 2003 and 2004, Sedgwick County officials testified they began classifying and valuing wireless communication towers as commercial real property. This classification and valuation has been appealed by tower owners to the State Board of Tax Appeals

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

(BOTA). In all 29 tower-related cases currently pending at BOTA, the issue is the same, i.e., whether the wireless communication towers are real property and valued at fair market value or personal property and valued at retail cost when new, less depreciation.

The Sedgwick County Appraisal Office maintains these towers are real property because (1) they are fixtures, and (2) in the county officials' interpretation, KSA 79-430 defines them as such.

Proponents of the bill, including Pixius Communications, LLC; Verizon Wireless; and Stinson, Morrison, Hecker, LLP testified their tax bills increased dramatically as the result of the county's classification change. They indicated the Kansas Department of Revenue (KDOR) Property Valuation Department's Personal Property Guide has specifically classified radio station, television, citizen's band and cable television towers as personal property. Cell towers have never been classified specifically in that Guide. These proponents defended cell towers' classification as personal property under the "three prong" test of *In re: Equalization Appeals of Total Petroleum, Inc.*, 28 Kan. App. 2d, 16 P.3d 981 (2000).

Other proponents included the Kansas Association of Broadcasters and the General Manager of Agape Communications in Wichita, who requested that broadcast towers be specified among the items required to be classified as tangible personal property.

The bill was amended to specifically include broadcast towers and exclude public utility property among those items that must be classified as personal property.

The fiscal note on the amended bill was not available at the time of passage by the Committee. However, the fiscal note issued on the original bill noted KDOR is not making an estimate regarding the bill's fiscal effect, due to difficulty in estimating the impact. This difficulty stems from the fact that KDOR believes most of the described properties are already treated in the manner the bill prescribes. The Department does not know the percentage of such property currently being treated as real property, which would experience a change in classification as a result of the bill.