

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2643

By Committee on Taxation

2-12

1 AN ACT concerning property taxation; relating to the classification of
2 commercial and industrial machinery and equipment; **independent**
3 **appraisers; reclassification of certain tax exempt property;**
4 **amending K.S.A. 2013 Supp. 79-1609 and repealing the existing**
5 **section.**

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 **New Section 1.** (a) (1) The provisions of this section are intended to
9 codify the original legislative intent of the 2006 law exempting from ad
10 valorem taxation commercial and industrial machinery and equipment
11 purchased, leased or transported into the state after June 30, 2006,
12 pursuant to K.S.A. 2013 Supp. 79-223, and amendments thereto.

13 (2) As used in this section, "commercial and industrial machinery and
14 equipment" means property classified within subclass (5) of class 2 of
15 section 1 of article 11 of the constitution of the state of Kansas.

16 (b) (1) In determining the classification of property for ad valorem
17 tax purposes, the county appraiser shall conform to the factors set forth in
18 the personal property guide devised or prescribed by the director of
19 property valuation pursuant to K.S.A. 75-5105a(b), and amendments
20 thereto.

21 (2) Commercial and industrial machinery and equipment that is used
22 in a manufacturing, industrial, commercial or retail process shall be
23 considered personal property for purposes of property tax classification
24 and valuation.

25 (3) Where the proper classification of commercial and industrial
26 machinery and equipment is not clearly determined by its use, as described
27 in subsection (b)(2), the appraiser shall use the following three part test as
28 set forth in the personal property guide prescribed by the director of
29 property valuation pursuant to K.S.A. 75-5105a(b), and amendments
30 thereto:

- 31 (A) Annexation to the realty;
32 (B) adaptation to the use of the part of the realty to which it is
33 attached; and
34 (C) the intention of the party making the annexation.

35 **New Sec. 2. For all tax years commencing after December 31,**
36 **2013, property that has been constructed or purchased with the**

1 proceeds of any revenue bonds authorized by K.S.A. 12-1740 to 12-
2 1749a, inclusive, and amendments thereto, and exempted from all
3 property or ad valorem taxes pursuant to K.S.A. 79-201a, *Second*, and
4 amendments thereto, which is returned to the taxable rolls of the
5 county upon the expiration of such exemption, shall retain its
6 classifications as real or personal as approved by the court of tax
7 appeals at the time the exemption was granted. No such property shall
8 be considered reclassified or reclassified after the expiration of such
9 tax exemption period absent the approval of the court of tax appeals
10 upon a hearing in a decision upheld upon appeal, if any, and:

- 11 (a) A material physical change to such property;
- 12 (b) a material change in the use of such property; or
- 13 (c) a substantial change in directly applicable law.

14 In any action taken by a county appraiser or taxpayer before the
15 court of tax appeals to change the classification of such property, the
16 party seeking a change in classification shall bear the burden of proof
17 with regard to the issue of classification. The taxpayer shall be a party
18 in any such action brought by a county appraiser.

19 New Sec. 3. The court of tax appeals shall have the power and
20 duty to hear a petition to change the classification of property as
21 required by section 2, and amendments thereto, and may issue rules
22 and regulations to implement the provisions of sections 2 and 3, and
23 amendments thereto.

24 New Sec. 4. (a) On or before October 15 of the year preceding the
25 tax year for which the property is to be classified and appraised, the
26 county appraiser or the taxpayer may request that the director of
27 property valuation contract with an independent appraiser to classify
28 and appraise natural gas and helium processing facilities, ethanol
29 facilities, crude oil refineries, fertilizer manufacturing facilities,
30 cement manufacturing facilities, and such other complex industrial
31 properties as otherwise requested by the county appraiser or the
32 taxpayer. Before making such request, the county appraiser and the
33 taxpayer shall be required to meet to discuss the property at issue,
34 including the suitability of the property to be classified and appraised
35 by an independent appraiser, as provided in this section. After such
36 meeting and upon request by the county or the taxpayer, the director
37 shall contract with an independent appraiser from the list of
38 appraisers as provided in subsection (b) to conduct such
39 determination of the property. Prior to entering into any contract with
40 an independent appraiser to classify and appraise the property at
41 issue, the director shall meet with the county appraiser to discuss the
42 costs of an independent appraisal. The county shall be responsible for
43 all reasonable and prior approved costs of the independent

1 classification and appraisal.

2 (b) The director shall maintain a list of qualified appraisers who
3 are certified real property appraisers and who have at least three
4 years of experience in the classification and appraisal of the types of
5 property described in this section.

6 (c) The final determination made by the independent appraiser
7 pursuant to this section shall be admissible before the courts of this
8 state and the Kansas court of tax appeals in any subsequent
9 classification and valuation proceedings.

10 New Sec. 5. The director of property valuation may require the
11 county appraiser and the taxpayer to submit such documentation to
12 the independent appraiser described in section 4, and amendments
13 thereto, as necessary in order to classify and appraise the property.
14 The taxpayer shall permit one or more physical inspections of the
15 property, scheduled at mutually agreeable times so as not to delay the
16 timely completion of the classification and appraisal of the property.

17 New Sec. 6. (a) The director of property valuation shall notify the
18 taxpayer and the county appraiser on or before March 1 for real
19 property and May 1 for personal property, of the classification and
20 appraised valuation of the property described in section 4, and
21 amendments thereto. Such notification shall be mailed to the county
22 appraiser and to the taxpayer at the taxpayer's last known address.

23 (b) Within 15 days of receipt of the notification required by
24 subsection (a) of this section, if the taxpayer or the county appraiser
25 has any objection to the notification as issued, the taxpayer or the
26 county appraiser shall notify the director of property valuation in
27 writing of such objection. Within 30 days of the receipt by the director
28 of such objection, the director shall hold an informal meeting with the
29 taxpayer of the county and shall issue a final determination, which
30 shall become effective for purposes of appeal as provided in K.S.A. 79-
31 1609, and amendments thereto. Informal meetings held pursuant to
32 this section may be conducted by the director or the director's
33 designee. An information meeting with the director or the director's
34 designee shall be a condition precedent to an appeal to the court of tax
35 appeals.

36 New Sec. 7. Prior to January 1, 2015, the secretary of revenue
37 shall adopt rules and regulations necessary to administer the
38 provisions of sections 4 through 6, and amendments thereto.

39 Sec. 8. K.S.A. 2013 Supp. 79-1609 is hereby amended to read as
40 follows: 79-1609. Any person aggrieved by any order of the hearing
41 officer or panel, *or by the classification and appraisal of an independent*
42 *appraiser, as provided in section 6, and amendments thereto, may appeal*
43 *to the state court of tax appeals by filing a written notice of appeal, on*

1 forms approved by the state court of tax appeals and provided by the
2 county clerk for such purpose, stating the grounds thereof and a
3 description of any comparable property or properties and the
4 appraisal thereof upon which they rely as evidence of inequality of the
5 appraisal of their property, if that be a ground of the appeal, with the
6 state court of tax appeals and by filing a copy thereof with the county
7 clerk within 30 days after the date of the order from which the appeal
8 is taken. A county or district appraiser may appeal to the state court of
9 tax appeals from any order of the hearing officer or panel. With
10 regard to any matter properly submitted to the court relating to the
11 determination of valuation of residential property or real property
12 used for commercial and industrial purposes for taxation purposes, it
13 shall be the duty of the county appraiser to initiate the production of
14 evidence to demonstrate, by a preponderance of the evidence, the
15 validity and correctness of such determination. With regard to leased
16 commercial and industrial property, the presumption of validity and
17 correctness of such determination shall exist in favor of the county or
18 district appraiser unless, within 30 calendar days following the
19 informal meeting required by K.S.A. 79-1448, and amendments
20 thereto, the taxpayer furnished to the county or district appraiser
21 complete income and expense statements for the property for the three
22 years next preceding the year of appeal.

23 **Sec. 9. K.S.A. 2013 Supp. 79-1609 is hereby repealed.**

24 ~~Sec. 2.~~ **10.** This act shall take effect and be in force from and after its
25 publication in the statute book.