

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2240

By General Government Budget Committee

2-5

1 AN ACT concerning taxation; relating to the board of tax appeals; small
2 claims and expedited hearing division, hearing officers; **members,**
3 **qualifications and salary;** amending K.S.A. 2014 Supp. 74-2433, 74-
4 2433f and 74-2434 and repealing the existing ~~section~~ **sections.**

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2014 Supp. 74-2433f is hereby amended to read as
8 follows: 74-2433f. (a) There shall be a division of the state board of tax
9 appeals known as the small claims and expedited hearings division.
10 Hearing officers appointed by the chief hearing officer shall have authority
11 to hear and decide cases heard in the small claims and expedited hearings
12 division. ~~The chief hearing officer shall not appoint as a hearing officer~~
13 ~~any person employed by the board, including, but not limited to, any~~
14 ~~person employed by the board as an attorney.~~

15 (b) The small claims and expedited hearings division shall have
16 jurisdiction over hearing and deciding applications for the refund of
17 protested taxes under the provisions of K.S.A. 79-2005, and amendments
18 thereto, and hearing and deciding appeals from decisions rendered
19 pursuant to the provisions of K.S.A. 79-1448, and amendments thereto,
20 and of article 16 of chapter 79 of the Kansas Statutes Annotated, and
21 amendments thereto, with regard to single-family residential property. The
22 filing of an appeal with the small claims and expedited hearings division
23 shall be a prerequisite for filing an appeal with the state board of tax
24 appeals for appeals involving single-family residential property.

25 (c) At the election of the taxpayer, the small claims and expedited
26 hearings division shall have jurisdiction over: (1) Any appeal of a decision,
27 finding, order or ruling of the director of taxation, except an appeal,
28 finding, order or ruling relating to an assessment issued pursuant to K.S.A.
29 79-5201 et seq., and amendments thereto, in which the amount of tax in
30 controversy does not exceed \$15,000; (2) hearing and deciding
31 applications for the refund of protested taxes under the provisions of
32 K.S.A. 79-2005, and amendments thereto, where the value of the property,
33 other than property devoted to agricultural use, is less than \$3,000,000 as
34 reflected on the valuation notice; and (3) hearing and deciding appeals
35 from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and
36 amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes

1 Annotated, and amendments thereto, other than those relating to land
2 devoted to agricultural use, wherein the value of the property is less than
3 \$3,000,000 as reflected on the valuation notice.

4 (d) In accordance with the provisions of K.S.A. 74-2438, and
5 amendments thereto, any party may elect to appeal any application or
6 decision referenced in subsection (b) to the state board of tax appeals.
7 Except as provided in subsection (b) regarding single-family residential
8 property, the filing of an appeal with the small claims and expedited
9 hearings division shall not be a prerequisite for filing an appeal with the
10 state board of tax appeals under this section. Final decisions of the small
11 claims and expedited hearings division may be appealed to the state board
12 of tax appeals. An appeal of a decision of the small claims and expedited
13 hearings division to the state board of tax appeals shall be de novo. The
14 county bears the burden of proof in any appeal filed by the county
15 pursuant to this section.

16 (e) A taxpayer shall commence a proceeding in the small claims and
17 expedited hearings division by filing a notice of appeal in the form
18 prescribed by the rules of the state board of tax appeals which shall state
19 the nature of the taxpayer's claim. The notice of appeal may be signed by
20 the taxpayer, any person with an executed declaration of representative
21 form from the property valuation division of the department of revenue or
22 any person authorized to represent the taxpayer in subsection (f). Notice of
23 appeal shall be provided to the appropriate unit of government named in
24 the notice of appeal by the taxpayer. In any valuation appeal or tax protest
25 commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas
26 Statutes Annotated, and amendments thereto, the hearing shall be
27 conducted in the county where the property is located or a county adjacent
28 thereto. In any appeal from a final determination by the secretary of
29 revenue, the hearing shall be conducted in the county in which the
30 taxpayer resides or a county adjacent thereto.

31 (f) The hearing in the small claims and expedited hearings division
32 shall be informal. The hearing officer may hear any testimony and receive
33 any evidence the hearing officer deems necessary or desirable for a just
34 determination of the case. A hearing officer shall have the authority to
35 administer oaths in all matters before the hearing officer. All testimony
36 shall be given under oath. A party may appear personally or may be
37 represented by an attorney, a certified public accountant, a certified general
38 appraiser, a tax representative or agent, a member of the taxpayer's
39 immediate family or an authorized employee of the taxpayer. A county or
40 unified government may be represented by the county appraiser, designee
41 of the county appraiser, county attorney or counselor or other
42 representatives so designated. No transcript of the proceedings shall be
43 kept.

1 (g) The hearing in the small claims and expedited hearings division
2 shall be conducted within 60 days after the appeal is filed in the small
3 claims and expedited hearings division unless such time period is waived
4 by the taxpayer. A decision shall be rendered by the hearing officer within
5 30 days after the hearing is concluded and, in cases arising from appeals
6 described by subsections (b) and (c)(2) and (3), shall be accompanied by a
7 written explanation of the reasoning upon which such decision is based.
8 Documents provided by a taxpayer or county or district appraiser shall be
9 returned to the taxpayer or the county or district appraiser by the hearing
10 officer and shall not become a part of the board's permanent records.
11 Documents provided to the hearing officer shall be confidential and may
12 not be disclosed, except as otherwise specifically provided.

13 (h) With regard to any matter properly submitted to the division
14 relating to the determination of valuation of property for taxation purposes,
15 it shall be the duty of the county appraiser to initiate the production of
16 evidence to demonstrate, by a preponderance of the evidence, the validity
17 and correctness of such determination. No presumption shall exist in favor
18 of the county appraiser with respect to the validity and correctness of such
19 determination. With regard to leased commercial and industrial property,
20 the burden of proof shall be on the taxpayer unless the taxpayer has
21 furnished the county or district appraiser, within 30 calendar days
22 following the informal meeting required by K.S.A. 79-1448, and
23 amendments thereto, or within 30 calendar days following the informal
24 meeting required by K.S.A. 79-2005, and amendments thereto, a complete
25 income and expense statement for the property for the three years next
26 preceding the year of appeal. Such income and expense statement shall be
27 in such format that is regularly maintained by the taxpayer in the ordinary
28 course of the taxpayer's business. If the taxpayer submits a single property
29 appraisal with an effective date of January 1 of the year appealed, the
30 burden of proof shall return to the county appraiser.

31 **Sec. 2. K.S.A. 2014 Supp. 74-2433 is hereby amended to read as**
32 **follows: 74-2433. (a) There is hereby created a state board of tax**
33 **appeals, referred to in this act as the board. The board shall be**
34 **composed of three members who shall be appointed by the governor,**
35 **subject to confirmation by the senate as provided in K.S.A. 75-4315b,**
36 **and amendments thereto. For members appointed after June 30, 2014,**
37 **one of such members shall have been regularly admitted to practice**
38 **law in the state of Kansas and for a period of at least five years, have**
39 **engaged in the active practice of law as a lawyer, judge of a court of**
40 **record or any other court in this state; one of such members shall have**
41 **engaged in active practice as a certified public accountant for a period**
42 **of at least five years and one such member shall be a licensed certified**
43 **general real property appraiser. In addition, the governor shall also**

1 appoint a chief hearing officer, subject to confirmation by the senate
2 as provided in K.S.A. 75-4315b, and amendments thereto, who, in
3 addition to other duties prescribed by this act, shall serve as a member
4 pro tempore of the board. No successor shall be appointed for any
5 judge of the court of tax appeals appointed before July 1, 2014. Such
6 persons shall continue to serve as members on the board of tax
7 appeals until their terms expire. Except as provided by K.S.A. 46-
8 2601, and amendments thereto, no person appointed to the board,
9 including the chief hearing officer, shall exercise any power, duty or
10 function as a member of the board until confirmed by the senate. Not
11 more than two members of the board shall be of the same political
12 party. Members of the board, including the chief hearing officer, shall
13 be residents of the state. Subject to the provisions of K.S.A. 75-4315c,
14 and amendments thereto, no more than one member shall be
15 appointed from any one of the congressional districts of Kansas
16 unless, after having exercised due diligence, the governor is unable to
17 find a qualified replacement within 90 days after any vacancy on the
18 board occurs. The members of the board, including the chief hearing
19 officer, shall be selected with special reference to training and
20 experience for duties imposed by this act and shall be individuals with
21 legal, tax, accounting or appraisal training and experience. State
22 board of tax appeals members shall be subject to the supreme court
23 rules of judicial conduct applicable to all judges of the district court.
24 The board shall be bound by the doctrine of stare decisis limited to
25 published decisions of an appellate court. Members of the board,
26 including the chief hearing officer, shall hold office for terms of four
27 years. A member may continue to serve for a period of 90 days after
28 the expiration of the member's term, or until a successor has been
29 appointed and confirmed, whichever is shorter. Except as otherwise
30 provided, such terms of office shall expire on January 15 of the last
31 year of such term. If a vacancy occurs on the board, or in the position
32 for chief hearing officer, the governor shall appoint a successor to fill
33 the vacancy for the unexpired term. Nothing in this section shall be
34 construed to prohibit the governor from reappointing any member of
35 the board, including the chief hearing officer, for additional four-year
36 terms. The governor shall select one of its members to serve as
37 chairperson. The votes of two members shall be required for any final
38 order to be issued by the board. Meetings may be called by the
39 chairperson and shall be called on request of a majority of the
40 members of the board and when otherwise prescribed by statute.

41 (b) Any member appointed to the state board of tax appeals and
42 the chief hearing officer may be removed by the governor for cause,
43 after public hearing conducted in accordance with the provisions of

1 the Kansas administrative procedure act.

2 (c) The state board of tax appeals shall appoint, subject to
3 approval by the governor, an executive director of the board, to serve
4 at the pleasure of the board. The executive director shall: (1) Be in the
5 unclassified service under the Kansas civil service act; (2) devote full
6 time to the executive director's assigned duties; (3) receive such
7 compensation as determined by the board, subject to the limitations of
8 appropriations thereof; and (4) have familiarity with the tax appeals
9 process sufficient to fulfill the duties of the office of executive director.
10 The executive director shall perform such other duties as directed by
11 the board.

12 (d) Appeals decided by the state board of tax appeals shall be
13 made available to the public and shall be published by the board on
14 the board's website within 30 days after the decision has been
15 rendered. The board shall also publish a monthly report that includes
16 all appeals decided that month as well as all appeals which have not
17 yet been decided and are beyond the time limitations as set forth in
18 K.S.A. 74-2426, and amendments thereto. Such report shall be made
19 available to the public and transmitted by the board to the members
20 of the Kansas legislature.

21 (e) After appointment, members of the state board of tax appeals
22 *that are not otherwise a state certified general real property appraiser*
23 shall complete the following course requirements: (1) A tested
24 appraisal course of not less than 30 clock hours of instruction
25 consisting of the fundamentals of real property appraisal with an
26 emphasis on the cost and sales approaches to value; (2) a tested
27 appraisal course of not less than 30 clock hours of instruction
28 consisting of the fundamentals of real property appraisal with an
29 emphasis on the income approach to value; (3) a tested appraisal
30 course of not less than 30 clock hours of instruction with an emphasis
31 on mass appraisal; (4) an appraisal course with an emphasis on
32 Kansas property tax laws ~~and~~; (5) an appraisal course on the
33 techniques and procedures for the valuation of state assessed
34 properties with an emphasis on unit valuation; and (6) a tested
35 appraisal course on the techniques and procedures for the valuation of
36 land devoted to agricultural use pursuant to K.S.A. 79-1476, and
37 amendments thereto. *Any member appointed to the board who is a*
38 *certified real property appraiser shall only be required to take such*
39 *educational courses as are required to maintain the appraisal license.* The
40 executive director shall adopt rules and regulations prescribing a
41 timetable for the completion of the course requirements and
42 prescribing continued education requirements for members of the
43 board.

1 (f) The state board of tax appeals shall have no capacity or power
2 to sue or be sued.

3 (g) It is the intent of the legislature that proceedings in front of
4 the board of tax appeals be conducted in a fair and impartial manner
5 and that all taxpayers are entitled to a neutral interpretation of the tax
6 laws of the state of Kansas. The provisions of the tax laws of this state
7 shall be applied impartially to both taxpayers and taxing districts in
8 cases before the board. Cases before the board shall not be decided
9 upon arguments concerning the shifting of the tax burden or upon any
10 revenue loss or gain which may be experienced by the taxing district.

11 Sec. 3. K.S.A. 2014 Supp. 74-2434 is hereby amended to read as
12 follows: 74-2434. (a) Each member of the board, including the
13 chairperson and chief hearing officer, shall receive an annual salary as
14 provided in this section. Each of the members of the board, including
15 the chief hearing officer, shall devote full time to the duties of such
16 office.

17 (b) For members, including the chief hearing officer, who are
18 appointed prior to July 1, 2014:

19 (1) The annual salary of the ~~chief judge~~ *chairperson* shall be an
20 amount equal to the annual salary paid by the state to a district judge
21 designated as chief judge; and

22 (2) the annual salary of each ~~judge member~~ other than the chief
23 ~~judge~~ *chairperson*, including the chief hearing officer, shall be an
24 amount which is \$2,465 less than the annual salary of the ~~chief judge~~
25 *chairperson*.

26 (c) For members, including the chief hearing officer, *who are not*
27 *state certified real property appraisers who are appointed after June 30,*
28 **2014**, the annual salary shall be an amount equal to the annual salary
29 paid by the state to an administrative law judge, except that once such
30 member or chief hearing officer completes the course requirements
31 listed in K.S.A. 74-2433(e), and amendments thereto, then the annual
32 salary shall be an amount which is \$2,465 less than the annual salary
33 paid by the state to a district court judge designated as a chief judge.

34 Sec. ~~2~~. 4. K.S.A. 2014 Supp. 74-2433, 74-2433f ~~is~~ and 74-2434 are
35 hereby repealed.

36 Sec. ~~3~~. 5. This act shall take effect and be in force from and after its
37 publication in the ~~statute book~~ **Kansas register**.