

SENATE BILL No. 528

By Committee on Ways and Means

2-3

9 AN ACT concerning property valuation; regarding appeals; burden of
10 proof; amending K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-
11 1606, 79-1609 and 79-2005 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 74-2433f is hereby amended to read as
15 follows: 74-2433f. (a) There shall be a division of the state court of tax
16 appeals known as the small claims and expedited hearings division. Hear-
17 ing officers appointed by the chief hearing officer shall have authority to
18 hear and decide cases heard in the small claims and expedited hearings
19 division.

20 (b) The small claims and expedited hearings division shall have juris-
21 diction over hearing and deciding applications for the refund of protested
22 taxes under the provisions of K.S.A. 79-2005, and amendments thereto,
23 and hearing and deciding appeals from decisions rendered pursuant to
24 the provisions of K.S.A. 79-1448, and amendments thereto, and of article
25 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory
26 thereof or supplemental thereto, with regard to single-family residential
27 property. The filing of an appeal with the small claims and expedited
28 hearings division shall be a prerequisite for filing an appeal with the state
29 court of tax appeals for appeals involving single-family residential
30 property.

31 (c) At the election of the taxpayer, the small claims and expedited
32 hearings division shall have jurisdiction over: (1) Any appeal of a decision,
33 finding, order or ruling of the director of taxation, except an appeal, find-
34 ing, order or ruling relating to an assessment issued pursuant to K.S.A.
35 79-5201 et seq., and amendments thereto, in which the amount of tax in
36 controversy does not exceed \$15,000; (2) hearing and deciding applica-
37 tions for the refund of protested taxes under the provisions of K.S.A. 79-
38 2005, and amendments thereto, where the value of the property, other
39 than property devoted to agricultural use, is less than \$2,000,000 as re-
40 flected on the valuation notice; (3) hearing and deciding appeals from
41 decisions rendered pursuant to the provisions of K.S.A. 79-1448, and
42 amendments thereto, and of article 16 of chapter 79 of the Kansas Stat-
43 utes Annotated, and acts amendatory thereof or supplemental thereto,

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

4 (d) In accordance with the provisions of K.S.A. 74-2438, and amend-
5 ments thereto, any party may elect to appeal any application or decision
6 referenced in subsection (b) to the state court of tax appeals. Except as
7 provided in subsection (b) regarding single-family residential property,
8 the filing of an appeal with the small claims and expedited hearings di-
9 vision shall not be a prerequisite for filing an appeal with the state court
10 of tax appeals under this section. Final decisions of the small claims and
11 expedited hearings division may be appealed to the state court of tax
12 appeals. An appeal of a decision of the small claims and expedited hear-
13 ings division to the state court of tax appeals shall be de novo.

14 (e) A taxpayer shall commence a proceeding in the small claims and
15 expedited hearings division by filing a notice of appeal in the form pre-
16 scribed by the rules of the state court of tax appeals which shall state the
17 nature of the taxpayer's claim. Notice of appeal shall be provided to the
18 appropriate unit of government named in the notice of appeal by the
19 taxpayer. In any valuation appeal or tax protest commenced pursuant to
20 articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and
21 amendments thereto, the hearing shall be conducted in the county where
22 the property is located or a county adjacent thereto. In any appeal from
23 a final determination by the secretary of revenue, the hearing shall be
24 conducted in the county in which the taxpayer resides or a county adjacent
25 thereto.

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

38 (g) The hearing in the small claims and expedited hearings division
39 shall be conducted within 60 days after the appeal is filed in the small
40 claims and expedited hearings division unless such time period is waived
41 by the taxpayer. A decision shall be rendered by the hearing officer within
42 30 days after the hearing is concluded and, in cases arising from appeals
43 described by subsections (b) and (c)(2) and (3), shall be accompanied by

1 a written explanation of the reasoning upon which such decision is based.
2 Documents provided by a taxpayer or county or district appraiser shall
3 be returned to the taxpayer or the county or district appraiser by the
4 hearing officer and shall not become a part of the court's permanent
5 records. Documents provided to the hearing officer shall be confidential
6 and may not be disclosed, except as otherwise specifically provided.

7 (h) With regard to any matter properly submitted to the division re-
8 lating to the determination of valuation of property for taxation purposes,
9 it shall be the duty of the ~~county appraiser to initiate the production of~~
10 ~~evidence to demonstrate, by a preponderance of the evidence, the validity~~
11 ~~and correctness of such determination~~ *property owner to produce evi-*
12 *dence to substantiate the property's value by a preponderance of the evi-*
13 *dence. In the absence of such evidence, the county or district appraiser's*
14 *value shall be presumed to be valid and correct. No presumption shall*
15 ~~exist in favor of the county appraiser with respect to the validity and~~
16 ~~correctness of such determination.~~

17 Sec. 2. K.S.A. 2009 Supp. 74-2438 is hereby amended to read as
18 follows: 74-2438. An appeal may be taken to the state court of tax appeals
19 from any finding, ruling, order, decision, final determination or other final
20 action, including action relating to abatement or reduction of penalty and
21 interest, on any case of the secretary of revenue or the secretary's des-
22 ignee by any person aggrieved thereby. Notice of such appeal shall be
23 filed with the secretary of the court within 30 days after such finding,
24 ruling, order, decision, final determination or other action on a case, and
25 a copy served upon the secretary of revenue or the secretary's designee.
26 An appeal may also be taken to the state court of tax appeals at any time
27 when no final determination has been made by the secretary of revenue
28 or the secretary's designee after 270 days has passed since the date of the
29 request for informal conference pursuant to K.S.A. 79-3226, and amend-
30 ments thereto, and no written agreement by the parties to further extend
31 the time for making such final determination is in effect. Upon receipt
32 of a timely appeal, the court shall conduct a hearing in accordance with
33 the provisions of the Kansas administrative procedure act. The hearing
34 before the court shall be a de novo hearing unless the parties agree to
35 submit the case on the record made before the secretary of revenue or
36 the secretary's designee. With regard to any matter properly submitted
37 to the court relating to the determination of valuation of residential prop-
38 erty or real property used for commercial and industrial purposes for
39 taxation purposes, it shall be the duty of the ~~county or district appraiser~~
40 *property owner* to initiate the production of evidence to demonstrate, by
41 a preponderance of the evidence, the validity and correctness of such
42 determination, ~~except that no such duty shall accrue with regard to leased~~
43 ~~commercial and industrial property unless the property owner has fur-~~

1 ~~nished to the county or district appraiser a complete income and expense~~
2 ~~statement for the property for the three years next preceding the year of~~
3 ~~appeal. No presumption shall exist in favor of the county or district ap-~~
4 ~~praiser with respect to the validity and correctness of such determination.~~
5 *In the absence of such evidence, the county or district appraiser's value*
6 *shall be presumed to be valid and correct.* No interest shall accrue on the
7 amount of the assessment of tax subject to any such appeal beyond 120
8 days after the date the matter was fully submitted, except that, if a final
9 order is issued within such time period, interest shall continue to accrue
10 until such time as the tax liability is fully satisfied, and if a final order is
11 issued beyond such time period, interest shall recommence to accrue
12 from the date of such order until such time as the tax liability is fully
13 satisfied.

14 Sec. 3. K.S.A. 2009 Supp. 79-1448 is hereby amended to read as
15 follows: 79-1448. Any taxpayer may complain or appeal to the county
16 appraiser from the classification or appraisal of the taxpayer's property by
17 giving notice to the county appraiser within 30 days subsequent to the
18 date of mailing of the valuation notice required by K.S.A. 79-1460, and
19 amendments thereto, for real property, and on or before May 15 for
20 personal property. The county appraiser or the appraiser's designee shall
21 arrange to hold an informal meeting with the aggrieved taxpayer with
22 reference to the property in question. At such meeting it shall be the duty
23 of the county appraiser or the county appraiser's designee to initiate pro-
24 duction of evidence to substantiate the valuation of such property, in-
25 cluding the affording to the taxpayer of the opportunity to review the data
26 sheet of comparable sales utilized in the determination of such valuation.
27 *With regard to leased commercial and industrial property, the property*
28 *owner may produce evidence to dispute such value, including income and*
29 *expense statements for the property for the three years next preceding the*
30 *year of appeal.* The county appraiser may extend the time in which the
31 taxpayer may informally appeal from the classification or appraisal of the
32 taxpayer's property for just and adequate reasons. Except as provided in
33 K.S.A. 79-1404, and amendments thereto, no informal meeting regarding
34 real property shall be scheduled to take place after May 15, nor shall a
35 final determination be given by the appraiser after May 20. Any final
36 determination shall be accompanied by a written explanation of the rea-
37 soning upon which such determination is based when such determination
38 is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final
39 determination of the county appraiser may appeal to the hearing officer
40 or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto,
41 and such hearing officer, or panel, for just cause shown and recorded, is
42 authorized to change the classification or valuation of specific tracts or
43 individual items of real or personal property in the same manner provided

1 for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to
2 a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and
3 amendments thereto, any taxpayer aggrieved by the final determination
4 of the county appraiser, except with regard to land devoted to agricultural
5 use, wherein the value of the property, is less than \$2,000,000, as reflected
6 on the valuation notice, or the property constitutes single family residen-
7 tial property, may appeal to the small claims and expedited hearings di-
8 vision of the state court of tax appeals within the time period prescribed
9 by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is ag-
10 grieved by the final determination of a hearing officer or panel may appeal
11 to the state court of tax appeals as provided in K.S.A. 79-1609, and amend-
12 ments thereto. An informal meeting with the county appraiser or the
13 appraiser's designee shall be a condition precedent to an appeal to the
14 county or district hearing panel.

15 Sec. 4. K.S.A. 2009 Supp. 79-1606 is hereby amended to read as
16 follows: 79-1606. (a) The county or district appraiser, hearing officer or
17 panel and arbitrator shall adopt, use and maintain the following records,
18 the form and method of use of which shall be prescribed by the director
19 of property valuation: (1) Appeal form, (2) hearing docket, and (3) record
20 of cases, including the disposition thereof.

21 (b) The county clerk shall furnish appeal forms to any taxpayer who
22 desires to appeal the final determination of the county or district appraiser
23 as provided in K.S.A. 79-1448, and amendments thereto. Any such appeal
24 shall be in writing and filed with the county clerk within 18 days of the
25 date that the final determination of the appraiser was mailed to the
26 taxpayer.

27 (c) The hearing officer or panel shall hear and determine any appeal
28 made by any taxpayer or such taxpayer's agent or attorney. All such hear-
29 ings shall be held in a suitable place in the county or district. Sufficient
30 evening and Saturday hearings shall be provided as shall be necessary to
31 hear all parties making requests for hearings at such times.

32 (d) Every appeal so filed shall be set for hearing by the hearing officer
33 or panel, which hearing shall be held on or before July 1, and the hearing
34 officer or panel shall have no authority to be in session thereafter, except
35 as provided in K.S.A. 79-1404, and amendments thereto. The county clerk
36 shall notify each appellant and the county or district appraiser of the date
37 for hearing of the taxpayer's appeal at least 10 days in advance of such
38 hearing. It shall be the duty of the ~~county or district appraiser to initiate~~
39 ~~the production of evidence to demonstrate, by a preponderance of the~~
40 ~~evidence, the validity and correctness of the classification or appraisal of~~
41 ~~residential property or real property used for commercial and industrial~~
42 ~~purposes, except that no such duty shall accrue with regard to leased~~
43 ~~commercial and industrial property unless the property owner has fur-~~

1 ~~nished to the county or district appraiser a complete income and expense~~
 2 ~~statement for the property for the three years next proceeding the year~~
 3 ~~of appeal. No presumption shall exist in favor of the county or district~~
 4 ~~appraiser with respect to the validity or correctness of any such classifi-~~
 5 ~~cation or valuation~~ *property owner to produce evidence to substantiate*
 6 *the property's value by a preponderance of the evidence. In the absence*
 7 *of such evidence, the county or district appraiser's value shall be presumed*
 8 *to be valid and correct.* Every such appeal shall be determined by order
 9 of the hearing officer or panel which shall be accompanied by a written
 10 explanation of the reasoning upon which such order is based. Such order
 11 shall be recorded in the minutes of such hearing officer or panel on or
 12 before July 5. Such recorded orders and minutes shall be open to public
 13 inspection. Notice as to disposition of the appeal shall be mailed by the
 14 county clerk to the taxpayer and the county or district appraiser within
 15 five days after the determination.

16 Sec. 5. K.S.A. 2009 Supp. 79-1609 is hereby amended to read as
 17 follows: 79-1609. Any person aggrieved by any order of the hearing officer
 18 or panel may appeal to the state court of tax appeals by filing a written
 19 notice of appeal, on forms approved by the state court of tax appeals and
 20 provided by the county clerk for such purpose, stating the grounds thereof
 21 and a description of any comparable property or properties and the appraiser
 22 appraisal thereof upon which they rely as evidence of inequality of the appraiser
 23 appraisal of their property, if that be a ground of the appeal, with the state
 24 court of tax appeals and by filing a copy thereof with the county clerk
 25 within 30 days after the date of the order from which the appeal is taken.
 26 A county or district appraiser may appeal to the state court of tax appeals
 27 from any order of the hearing officer or panel. With regard to any matter
 28 properly submitted to the court relating to the determination of valuation
 29 of residential property or real property used for commercial and industrial
 30 purposes for taxation purposes, it shall be the duty of the ~~county appraiser~~
 31 *appellant* to initiate the production of evidence to demonstrate, by a pre-
 32 ponderance of the evidence, the validity and correctness of ~~such deter-~~
 33 ~~mination except that no such duty shall accrue with regard to leased com-~~
 34 ~~mmercial and industrial property unless the property owner has furnished~~
 35 ~~to the county or district appraiser a complete income and expense state-~~
 36 ~~ment for the property for the three years next preceding the year of~~
 37 ~~appeal~~ *the appellant's proposed property value.* No presumption shall
 38 exist in favor of the county appraiser with respect to the validity and
 39 correctness of such determination.

40 Sec. 6. K.S.A. 2009 Supp. 79-2005 is hereby amended to read as
 41 follows: 79-2005. (a) Any taxpayer, before protesting the payment of such
 42 taxpayer's taxes, shall be required, either at the time of paying such taxes,
 43 or, if the whole or part of the taxes are paid prior to December 20, no

1 later than December 20, or, with respect to taxes paid in whole or in part
2 in an amount equal to at least $\frac{1}{2}$ of such taxes on or before December
3 20 by an escrow or tax service agent, no later than January 31 of the next
4 year, to file a written statement with the county treasurer, on forms ap-
5 proved by the state court of tax appeals and provided by the county trea-
6 surer, clearly stating the grounds on which the whole or any part of such
7 taxes are protested and citing any law, statute or facts on which such
8 taxpayer relies in protesting the whole or any part of such taxes. When
9 the grounds of such protest is an assessment of taxes made pursuant to
10 K.S.A. 79-332a and 79-1427a, and amendments thereto, the county trea-
11 surer may not distribute the taxes paid under protest until such time as
12 the appeal is final. When the grounds of such protest is that the valuation
13 or assessment of the property upon which the taxes are levied is illegal
14 or void, the county treasurer shall forward a copy of the written statement
15 of protest to the county appraiser who shall within 15 days of the receipt
16 thereof, schedule an informal meeting with the taxpayer or such tax-
17 payer's agent or attorney with reference to the property in question. *It*
18 *shall be the duty of the property owner to produce evidence to substantiate*
19 *the property's value by a preponderance of the evidence. In the absence*
20 *of such evidence, the county or district appraiser's value shall be presumed*
21 *to be valid and correct.* The county appraiser shall review the appraisal
22 of the taxpayer's property with the taxpayer or such taxpayer's agent or
23 attorney and may change the valuation of the taxpayer's property, if in
24 the county appraiser's opinion a change in the valuation of the taxpayer's
25 property is required to assure that the taxpayer's property is valued ac-
26 cording to law, and shall, within 15 business days thereof, notify the tax-
27 payer in the event the valuation of the taxpayer's property is changed, in
28 writing of the results of the meeting. In the event the valuation of the
29 taxpayer's property is changed and such change requires a refund of taxes
30 and interest thereon, the county treasurer shall process the refund in the
31 manner provided by subsection (l).

32 (b) No protest appealing the valuation or assessment of property shall
33 be filed pertaining to any year's valuation or assessment when an appeal
34 of such valuation or assessment was commenced pursuant to K.S.A. 79-
35 1448, and amendments thereto, nor shall the second half payment of taxes
36 be protested when the first half payment of taxes has been protested.
37 Notwithstanding the foregoing, this provision shall not prevent any sub-
38 sequent owner from protesting taxes levied for the year in which such
39 property was acquired, nor shall it prevent any taxpayer from protesting
40 taxes when the valuation or assessment of such taxpayer's property has
41 been changed pursuant to an order of the director of property valuation.

42 (c) A protest shall not be necessary to protect the right to a refund
43 of taxes in the event a refund is required because the final resolution of

1 an appeal commenced pursuant to K.S.A. 79-1448, and amendments
2 thereto, occurs after the final date prescribed for the protest of taxes.

3 (d) If the grounds of such protest shall be that the valuation or as-
4 sessment of the property upon which the taxes so protested are levied is
5 illegal or void, such statement shall further state the exact amount of
6 valuation or assessment which the taxpayer admits to be valid and the
7 exact portion of such taxes which is being protested.

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

11 (f) Upon the filing of a written statement of protest, the grounds of
12 which shall be that any tax levied, or any part thereof, is illegal, the county
13 treasurer shall mail a copy of such written statement of protest to the
14 state court of tax appeals and the governing body of the taxing district
15 making the levy being protested.

16 (g) Within 30 days after notification of the results of the informal
17 meeting with the county appraiser pursuant to subsection (a), the pro-
18 testing taxpayer may, if aggrieved by the results of the informal meeting
19 with the county appraiser, appeal such results to the state court of tax
20 appeals.

21 (h) After examination of the copy of the written statement of protest
22 and a copy of the written notification of the results of the informal meet-
23 ing with the county appraiser in cases where the grounds of such protest
24 is that the valuation or assessment of the property upon which the taxes
25 are levied is illegal or void, the court shall conduct a hearing in accordance
26 with the provisions of the Kansas administrative procedure act, unless
27 waived by the interested parties in writing. If the grounds of such protest
28 is that the valuation or assessment of the property is illegal or void the
29 court shall notify the county appraiser thereof.

30 (i) In the event of a hearing, the same shall be originally set not later
31 than 90 days after the filing of the copy of the written statement of protest
32 and a copy, when applicable, of the written notification of the results of
33 the informal meeting with the county appraiser with the court. With re-
34 gard to any matter properly submitted to the court relating to the deter-
35 mination of valuation of residential property or real property used for
36 commercial and industrial purposes for taxation purposes, it shall be the
37 duty of the ~~county appraiser~~ *property owner* to initiate the production of
38 evidence to ~~demonstrate~~ *substantiate*, by a preponderance of the evi-
39 dence, the ~~validity and correctness of such determination except that no~~
40 ~~such duty shall accrue to the county or district appraiser with regard to~~
41 ~~leased commercial and industrial property unless the property owner has~~
42 ~~furnished to the county or district appraiser a complete income and ex-~~
43 ~~penditure statement for the property for the three years next preceding the~~

1 ~~year of appeal~~ *property's value*. No presumption shall exist in favor of the
2 county appraiser with respect to the validity and correctness of such de-
3 termination. In all instances where the court sets a request for hearing
4 and requires the representation of the county by its attorney or counselor
5 at such hearing, the county shall be represented by its county attorney or
6 counselor.

7 (j) When a determination is made as to the merits of the tax protest,
8 the court shall render and serve its order thereon. The county treasurer
9 shall notify all affected taxing districts of the amount by which tax reve-
10 nues will be reduced as a result of a refund.

11 (k) If a protesting taxpayer fails to file a copy of the written statement
12 of protest and a copy, when applicable, of the written notification of the
13 results of the informal meeting with the county appraiser with the court
14 within the time limit prescribed, such protest shall become null and void
15 and of no effect whatsoever.

16 (l) (1) In the event the court orders that a refund be made pursuant
17 to this section or the provisions of K.S.A. 79-1609, and amendments
18 thereto, or a court of competent jurisdiction orders that a refund be made,
19 and no appeal is taken from such order, or in the event a change in
20 valuation which results in a refund pursuant to subsection (a), the county
21 treasurer shall, as soon thereafter as reasonably practicable, refund to the
22 taxpayer such protested taxes and, with respect to protests or appeals
23 commenced after the effective date of this act, interest computed at the
24 rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two
25 percentage points, per annum from the date of payment of such taxes
26 from tax moneys collected but not distributed. Upon making such refund,
27 the county treasurer shall charge the fund or funds having received such
28 protested taxes, except that, with respect to that portion of any such re-
29 fund attributable to interest the county treasurer shall charge the county
30 general fund. In the event that the state court of tax appeals or a court
31 of competent jurisdiction finds that any time delay in making its decision
32 is unreasonable and is attributable to the taxpayer, it may order that no
33 interest or only a portion thereof be added to such refund of taxes.

34 (2) No interest shall be allowed pursuant to paragraph (1) in any case
35 where the tax paid under protest was inclusive of delinquent taxes.

36 (m) Whenever, by reason of the refund of taxes previously received
37 or the reduction of taxes levied but not received as a result of decreases
38 in assessed valuation, it will be impossible to pay for imperative functions
39 for the current budget year, the governing body of the taxing district
40 affected may issue no-fund warrants in the amount necessary. Such war-
41 rants shall conform to the requirements prescribed by K.S.A. 79-2940,
42 and amendments thereto, except they shall not bear the notation required
43 by such section and may be issued without the approval of the state court

1 of tax appeals. The governing body of such taxing district shall make a tax
2 levy at the time fixed for the certification of tax levies to the county clerk
3 next following the issuance of such warrants sufficient to pay such war-
4 rants and the interest thereon. All such tax levies shall be in addition to
5 all other levies authorized by law.

6 (n) The county treasurer shall disburse to the proper funds all por-
7 tions of taxes paid under protest and shall maintain a record of all portions
8 of such taxes which are so protested and shall notify the governing body
9 of the taxing district levying such taxes thereof and the director of ac-
10 counts and reports if any tax protested was levied by the state.

11 (o) This statute shall not apply to the valuation and assessment of
12 property assessed by the director of property valuation and it shall not be
13 necessary for any owner of state assessed property, who has an appeal
14 pending before the state court of tax appeals, to protest the payment of
15 taxes under this statute solely for the purpose of protecting the right to
16 a refund of taxes paid under protest should that owner be successful in
17 that appeal.

18 Sec. 7. K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-1606, 79-
19 1609 and 79-2005 are hereby repealed.

20 Sec. 8. This act shall take effect and be in force from and after its
21 publication in the statute book.