

SENATE BILL No. 238

By Committee on Assessment and Taxation

3-19

1 AN ACT concerning property taxation; relating to classification of certain
2 property as real or personal property prior to installation or
3 construction; procedure for binding determination.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Any property owner or potential property owner
7 requesting a determination of the characterization of property as: (1)
8 Personal property within the definition of commercial and industrial
9 machinery and equipment pursuant to K.S.A. 2012 Supp. 79-223, and
10 amendments thereto; (2) telecommunications machinery and equipment
11 and railroad machinery and equipment pursuant to K.S.A. 2012 Supp. 79-
12 224, and amendments thereto; (3) other personal property; or (4) a fixture
13 or improvement to real property, for purposes of a determination of the
14 legal basis for the payment of ad valorem property taxes assessed, or to be
15 assessed, against such property, shall be required to file a request for
16 determination with the county appraiser of the county where such property
17 is located on forms approved by the state court of tax appeals and provided
18 by the county appraiser.

19 (b) The request for determination may be made prior to construction,
20 installation or acquisition of the property. The request shall identify and
21 describe in detail the property for which the determination is requested and
22 state, in detail, the legal and factual basis for the determination desired.

23 (c) The county appraiser may charge a reasonable fee to recover
24 administrative costs of reviewing and processing the request for
25 determination.

26 (d) The county appraiser shall promptly notify the director of
27 property valuation of the department of revenue and the secretary of
28 commerce of such filing. The director of property valuation and the
29 secretary of commerce may respond to the county appraiser with their
30 recommendations on or before the 10th business day following receipt of
31 such notification. A copy of any such recommendation shall be provided to
32 the applicant.

33 (e) The county appraiser may request additional information from the
34 applicant, and if applicable, access to the property at issue at any time
35 during the county appraiser's review of the request for determination
36 which shall not be unreasonably denied. Information considered

1 confidential under Kansas law shall be kept confidential and treated in
2 accordance with Kansas law and any applicable rules or procedures of the
3 Kansas court of tax appeals.

4 (f) Upon completing the review of the request for determination and
5 the recommendations of the director of property valuation and the
6 secretary of commerce, if any, the county appraiser shall recommend a
7 determination of the treatment of the property for ad valorem tax purposes
8 as real or personal property. If a denial of the applicant's request for ad
9 valorem tax treatment is recommended, a statement of the facts and law
10 relied upon shall be included in the determination. The county appraiser
11 shall provide a copy of the determination to the applicant, the director of
12 property valuation of the department of revenue and the secretary of
13 commerce.

14 (g) If the county appraiser and the applicant are in agreement, a
15 written and duly executed agreement of the county appraiser and the
16 applicant regarding the classification as real or personal property shall be
17 binding for the period ending December 31 of the 10th year following the
18 date of the agreement. Upon the end of the 10-year period, the
19 determination and agreement shall have no further effect and shall not be
20 cited, relied upon or considered in any future action. No action shall be
21 made for refund or assessment of property taxes subject to the agreement
22 on the basis of classification as real or personal property except to enforce
23 the terms of the agreement or in the event of misrepresentation or fraud. A
24 copy of the agreement shall be provided to the director of property
25 valuation of the department of revenue and the secretary of commerce.

26 (h) If the county appraiser and the applicant are not in agreement, or
27 the county appraiser believes a hearing before the court of tax appeals is
28 necessary, the county appraiser, after making such written
29 recommendation, shall file the request for determination, the
30 recommendations of the county appraiser, and any other documentation
31 relied upon by the county appraiser in making the determination with the
32 state court of tax appeals. The court shall docket the matter and notify the
33 applicant, the county appraiser, the secretary of commerce and the director
34 of property valuation of the department of revenue.

35 (i) After examination of the request for determination, the county
36 appraiser's recommendation related thereto, any filings made by the
37 secretary of commerce or the director of property valuation, and any other
38 information required by the court and requested of the parties, the court
39 may fix a time and place for hearing, and shall notify the parties of the
40 time and place so fixed. If the court of tax appeals elects to hold a hearing
41 or a hearing is requested by a party, the court shall schedule a hearing
42 within 30 days after the date of receipt of all information and data required
43 by the court relating to the request for determination, and such hearing

1 shall be conducted within 90 days after such date. Such time periods shall
2 be determined without regard to any extension or continuance allowed to
3 either party to such request. Hearings shall be conducted in accordance
4 with the provisions of the Kansas administrative procedure act. In all
5 instances where the court sets a hearing, the county shall be represented by
6 its county attorney or county counselor. An order shall be issued by the
7 court of tax appeals within 30 days of the hearing or, if no hearing is held,
8 within 60 days of the date all information and data required by the court
9 relating to the request for determination is received by the court. In the
10 latter case, the court shall advise the parties of the deadline for its order.

11 (j) During the pendency of review by the county appraiser and
12 consideration by the court of tax appeals of a request for determination, the
13 person, firm, unincorporated association, company or corporation charged
14 with real estate or personal property taxes against the property in question
15 pursuant to K.S.A. 79-2004 and 79-2004a, and amendments thereto, on the
16 tax books in the hands of the county treasurer shall be required to pay the
17 tax in accordance with the classification of the property as real or personal
18 property as at the time of the request for determination from the date the
19 request is filed with the county appraiser until the expiration of 30 days
20 after the court of tax appeals issued its order thereon and the same
21 becomes a final order and thereafter in accordance with the determination
22 of the court. In the event the court's determination as to the classification
23 as real or personal property changes the amount of any property tax due
24 for that time period, the court shall have authority to order a refund.

25 (k) The determination of the court as to the classification of the
26 property in question as real or personal property for purposes of ad
27 valorem taxation shall be effective for the period ending December 31 of
28 the 10th year following the date when the court's determination became
29 final 30 days after the court issued its order thereon. Upon the expiration
30 of the 10-year period, the determination shall cease to have any effect, and
31 may not be cited, relied upon or considered in any future action. Except to
32 enforce the terms of the court's determination or in the event of
33 misrepresentation or fraud, no action shall be brought for the refund or the
34 assessment of property taxes subject to the determination on the basis of
35 classification of the subject property as real or personal.

36 (l) Installation or construction of the property at issue shall
37 commence no later than 12 months after the date of an agreement or the
38 determination by the court, or the determination or agreement shall be
39 deemed void and shall not be considered or relied upon in any future
40 action.

41 Sec. 2. This act shall take effect and be in force from and after its
42 publication in the statute book.