

SENATE BILL No. 298

By Committee on Assessment and Taxation

1-22

1 AN ACT concerning property taxation; relating to classification of
2 property; appeals; requiring the county to pay reasonable attorney fees
3 and costs of prevailing taxpayer; amending K.S.A. 79-2005 and
4 repealing the existing section.
5

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

7 Section 1. K.S.A. 79-2005 is hereby amended to read as follows: 79-
8 2005. (a) Any taxpayer, before protesting the payment of such taxpayer's
9 taxes, shall be required, either at the time of paying such taxes, or, if the
10 whole or part of the taxes are paid prior to December 20, no later than
11 December 20, or, with respect to taxes paid in whole or in part in an
12 amount equal to at least $\frac{1}{2}$ of such taxes on or before December 20 by an
13 escrow or tax service agent, no later than January 31 of the next year, to
14 file a written statement with the county treasurer, on forms approved by
15 the state board of tax appeals and provided by the county treasurer, clearly
16 stating the grounds on which the whole or any part of such taxes are
17 protested and citing any law, statute or facts on which such taxpayer relies
18 in protesting the whole or any part of such taxes. When the grounds of
19 such protest is an assessment of taxes made pursuant to K.S.A. 79-332a
20 and 79-1427a, and amendments thereto, the county treasurer may not
21 distribute the taxes paid under protest until such time as the appeal is final.
22 When the grounds of such protest is that the valuation or assessment of the
23 property upon which the taxes are levied is illegal or void, the county
24 treasurer shall forward a copy of the written statement of protest to the
25 county appraiser who shall within 15 days of the receipt thereof, schedule
26 an informal meeting with the taxpayer or such taxpayer's agent or attorney
27 with reference to the property in question. At the informal meeting, it shall
28 be the duty of the county appraiser or the county appraiser's designee to
29 initiate production of evidence to substantiate the valuation of such
30 property, including a summary of the reasons that the valuation of the
31 property has been increased over the preceding year, any assumptions used
32 by the county appraiser to determine the value of the property and a
33 description of the individual property characteristics, property specific
34 valuation records and conclusions. The taxpayer shall be provided with the
35 opportunity to review the data sheets applicable to the valuation approach
36 utilized for the subject property. The county appraiser shall take into

1 account any evidence provided by the taxpayer which relates to the
2 amount of deferred maintenance and depreciation of the property. The
3 county appraiser shall review the appraisal of the taxpayer's property with
4 the taxpayer or such taxpayer's agent or attorney and may change the
5 valuation of the taxpayer's property, if in the county appraiser's opinion a
6 change in the valuation of the taxpayer's property is required to assure that
7 the taxpayer's property is valued according to law, and shall, within 15
8 business days thereof, notify the taxpayer in the event the valuation of the
9 taxpayer's property is changed, in writing of the results of the meeting. In
10 the event the valuation of the taxpayer's property is changed and such
11 change requires a refund of taxes and interest thereon, the county treasurer
12 shall process the refund in the manner provided by subsection (l).

13 (b) No protest appealing the valuation or assessment of property shall
14 be filed pertaining to any year's valuation or assessment when an appeal of
15 such valuation or assessment was commenced pursuant to K.S.A. 79-1448,
16 and amendments thereto, nor shall the second half payment of taxes be
17 protested when the first half payment of taxes has been protested.
18 Notwithstanding the foregoing, this provision shall not prevent any
19 subsequent owner from protesting taxes levied for the year in which such
20 property was acquired, nor shall it prevent any taxpayer from protesting
21 taxes when the valuation or assessment of such taxpayer's property has
22 been changed pursuant to an order of the director of property valuation.

23 (c) A protest shall not be necessary to protect the right to a refund of
24 taxes in the event a refund is required because the final resolution of an
25 appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto,
26 occurs after the final date prescribed for the protest of taxes.

27 (d) If the grounds of such protest shall be that the valuation or
28 assessment of the property upon which the taxes so protested are levied is
29 illegal or void, such statement shall further state the exact amount of
30 valuation or assessment which the taxpayer admits to be valid and the
31 exact portion of such taxes ~~which~~ that is being protested.

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

35 (f) Upon the filing of a written statement of protest, the grounds of
36 which shall be that any tax levied, or any part thereof, is illegal, the county
37 treasurer shall mail a copy of such written statement of protest to the state
38 board of tax appeals and the governing body of the taxing district making
39 the levy being protested.

40 (g) Within 30 days after notification of the results of the informal
41 meeting with the county appraiser pursuant to subsection (a), the
42 protesting taxpayer may, if aggrieved by the results of the informal
43 meeting with the county appraiser, appeal such results to the state board of

1 tax appeals.

2 (h) After examination of the copy of the written statement of protest
3 and a copy of the written notification of the results of the informal meeting
4 with the county appraiser in cases where the grounds of such protest is that
5 the valuation or assessment of the property upon which the taxes are levied
6 is illegal or void, the board shall conduct a hearing in accordance with the
7 provisions of the Kansas administrative procedure act, unless waived by
8 the interested parties in writing. If the grounds of such protest is that the
9 valuation or assessment of the property is illegal or void the board shall
10 notify the county appraiser thereof.

11 (i) In the event of a hearing, the same shall be originally set not later
12 than 90 days after the filing of the copy of the written statement of protest
13 and a copy, when applicable, of the written notification of the results of the
14 informal meeting with the county appraiser with the board. With regard to
15 any matter properly submitted to the board relating to the determination of
16 valuation of residential property or real property used for commercial and
17 industrial purposes for taxation purposes, it shall be the duty of the county
18 appraiser to initiate the production of evidence to demonstrate, by a
19 preponderance of the evidence, the validity and correctness of such
20 determination except that no such duty shall accrue to the county or
21 district appraiser with regard to leased commercial and industrial property
22 unless the property owner has furnished to the county or district appraiser
23 a complete income and expense statement for the property for the three
24 years next preceding the year of appeal. No presumption shall exist in
25 favor of the county appraiser with respect to the validity and correctness of
26 such determination. In all instances where the board sets a request for
27 hearing and requires the representation of the county by its attorney or
28 counselor at such hearing, the county shall be represented by its county
29 attorney or counselor. The board shall take into account any evidence
30 provided by the taxpayer which relates to the amount of deferred
31 maintenance and depreciation for the property. In any appeal from the
32 reclassification of property that was classified as land devoted to
33 agricultural use for the preceding year, the taxpayer's classification of the
34 property as land devoted to agricultural use shall be presumed to be valid
35 and correct if the taxpayer provides an executed lease agreement or other
36 documentation demonstrating a commitment to use the property for
37 agricultural use, if no other actual use is evident.

38 (j) When a determination is made as to the merits of the tax protest,
39 the board shall render and serve its order thereon. The county treasurer
40 shall notify all affected taxing districts of the amount by which tax
41 revenues will be reduced as a result of a refund.

42 (k) If a protesting taxpayer fails to file a copy of the written statement
43 of protest and a copy, when applicable, of the written notification of the

1 results of the informal meeting with the county appraiser with the board
2 within the time limit prescribed, such protest shall become null and void
3 and of no effect whatsoever.

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

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

24 (m) Whenever, by reason of the refund of taxes previously received
25 or the reduction of taxes levied but not received as a result of decreases in
26 assessed valuation, it will be impossible to pay for imperative functions for
27 the current budget year, the governing body of the taxing district affected
28 may issue no-fund warrants in the amount necessary. Such warrants shall
29 conform to the requirements prescribed by K.S.A. 79-2940, and
30 amendments thereto, except they shall not bear the notation required by
31 such section and may be issued without the approval of the state board of
32 tax appeals. The governing body of such taxing district shall make a tax
33 levy at the time fixed for the certification of tax levies to the county clerk
34 next following the issuance of such warrants sufficient to pay such
35 warrants and the interest thereon. All such tax levies shall be in addition to
36 all other levies authorized by law.

37 (n) Whenever a taxpayer appeals to the board of tax appeals pursuant
38 to the provisions of K.S.A. 79-1609, and amendments thereto, or pays
39 taxes under protest related to one property whereby the assessed valuation
40 of such property exceeds 5% of the total county assessed valuation of all
41 property located within such county and the taxpayer receives a refund of
42 such taxes paid under protest or a refund made pursuant to the provisions
43 of K.S.A. 79-1609, and amendments thereto, the county treasurer or the

1 governing body of any taxing subdivision within a county may request the
2 pooled money investment board to make a loan to such county or taxing
3 subdivision as provided in this section. The pooled money investment
4 board is authorized and directed to loan to such county or taxing
5 subdivision sufficient funds to enable the county or taxing subdivision to
6 refund such taxes to the taxpayer. The pooled money investment board is
7 authorized and directed to use any moneys in the operating accounts,
8 investment accounts or other investments of the state of Kansas to provide
9 the funds for such loan. Each loan shall bear interest at a rate equal to the
10 net earnings rate of the pooled money investment portfolio at the time of
11 the making of such loan. The total aggregate amount of loans under this
12 program shall not exceed \$50,000,000 of unencumbered funds pursuant to
13 article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments
14 thereto. Such loan shall not be deemed to be an indebtedness or debt of the
15 state of Kansas within the meaning of section 6 of article 11 of the
16 constitution of the state of Kansas. Upon certification to the pooled money
17 investment board by the county treasurer or governing body of the amount
18 of each loan authorized pursuant to this subsection, the pooled money
19 investment board shall transfer each such amount certified by the county
20 treasurer or governing body from the state bank account or accounts
21 prescribed in this subsection to the county treasurer who shall deposit such
22 amount in the county treasury. Any such loan authorized pursuant to this
23 subsection shall be repaid within four years. The county or taxing
24 subdivision shall make not more than four equal annual tax levies at the
25 time fixed for the certification of tax levies to the county clerk following
26 the making of such loan sufficient to pay such loan within the time period
27 required under such loan. All such tax levies shall be in addition to all
28 other levies authorized by law.

29 (o) The county treasurer shall disburse to the proper funds all portions
30 of taxes paid under protest and shall maintain a record of all portions of
31 such taxes which are so protested and shall notify the governing body of
32 the taxing district levying such taxes thereof and the director of accounts
33 and reports if any tax protested was levied by the state.

34 (p) This statute shall not apply to the valuation and assessment of
35 property assessed by the director of property valuation and it shall not be
36 necessary for any owner of state assessed property, who has an appeal
37 pending before the state board of tax appeals, to protest the payment of
38 taxes under this statute solely for the purpose of protecting the right to a
39 refund of taxes paid under protest should that owner be successful in that
40 appeal.

41 (q) *The county shall be required to pay the reasonable attorney fees*
42 *and costs of the prevailing taxpayer when: (1) The county appraiser*
43 *changes the classification of the taxpayer's property from the classification*

1 *for the preceding year without a zoning change occurring; (2) the*
2 *taxpayer challenges the new classification; and (3) the classification of the*
3 *taxpayer's property is returned to the same classification as for the*
4 *preceding year as the result of a final determination made pursuant to the*
5 *appeals process pursuant to this section or pursuant to the provisions of*
6 *K.S.A. 79-1448, and amendments thereto, or article 16 of chapter 79 of the*
7 *Kansas Statutes Annotated, and amendments thereto.*

8 Sec. 2. K.S.A. 79-2005 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.