

(Corrected)

{As Amended by House Committee of the Whole}

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, **definition,**
3 **classification**; **independent appraisers; reclassification of certain**
4 **tax exempt property; {motor vehicles, members of military service**
5 **and active guard and reservists;}** amending K.S.A. 2013 Supp. {12-
6 1744a, 79-251,} 79-1609 {and 79-5107} and repealing the existing
7 **section {sections}.**
8

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

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

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

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

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

28 (3) Where the proper classification of commercial and industrial
29 machinery and equipment is not clearly determined by its use, as described
30 in subsection (b)(2) **{from the definitions of real and personal property**
31 **provided in Kansas law}**, the appraiser shall use the following three part
32 **{fixture law}** test as set forth in the personal property guide prescribed by

1 the director of property valuation pursuant to K.S.A. 75-5105a(b), and
2 amendments thereto, **and shall consider the following**:

3 (A) ~~Annexation to the realty~~ **{The annexation of the machinery and**
4 **equipment to the real estate}**;

5 (B) **{the}** adaptation to the use of ~~the part~~ of the realty to which it is
6 attached **{and determination whether the property at issue serves the**
7 **real estate}**; and

8 (C) the intention of the party making the annexation, **based on the**
9 **nature of the item affixed; the relation and situation of the party**
10 **making the annexation; the structure and mode of annexation; and**
11 **the purpose or use for which the annexation was made.**

12 (3) The basic factors for clarifying items as real or personal
13 property are their designated use and purpose. The determination of
14 whether property is real or personal must be made on a case-by-case
15 basis. All three parts of the three-part fixture test must be satisfied for
16 the item to be classified as real property}.

17 ~~New Sec. 2. For all tax years commencing after December 31,~~
18 ~~2013, property that has been constructed or purchased with the~~
19 ~~proceeds of any revenue bonds authorized by K.S.A. 12-1740 to 12-~~
20 ~~1749a, inclusive, and amendments thereto, and exempted from all~~
21 ~~property or ad valorem taxes pursuant to K.S.A. 79-201a, *Second*, and~~
22 ~~amendments thereto, which is returned to the taxable rolls of the~~
23 ~~county upon the expiration of such exemption, shall retain its~~
24 ~~classifications as real or personal as approved by the court of tax~~
25 ~~appeals at the time the exemption was granted. No such property shall~~
26 ~~be considered reclassified or reclassified after the expiration of such~~
27 ~~tax exemption period absent the approval of the court of tax appeals~~
28 ~~upon a hearing in a decision upheld upon appeal, if any, and:~~

29 ~~(a) A material physical change to such property;~~

30 ~~(b) a material change in the use of such property; or~~

31 ~~(c) a substantial change in directly applicable law.~~

32 ~~In any action taken by a county appraiser or taxpayer before the~~
33 ~~court of tax appeals to change the classification of such property, the~~
34 ~~party seeking a change in classification shall bear the burden of proof~~
35 ~~with regard to the issue of classification. The taxpayer shall be a party~~
36 ~~in any such action brought by a county appraiser. (a) After July 1,~~
37 ~~2014, the owner of any project being constructed with the proceeds of~~
38 ~~industrial revenue bonds which has been exempted from ad valorem~~
39 ~~taxation pursuant to K.S.A. 79-201a *Second*, and amendments thereto,~~
40 ~~or the owner of any property exempted from ad valorem taxation~~
41 ~~pursuant to section 13 of article 11 of the constitution of the state of~~
42 ~~Kansas, shall within 30 days of the completion of any improvement on~~
43 ~~the project, notify the county appraiser of such completion and the~~

1 county appraiser upon receipt of such notification shall classify such
2 improvement as real property, personal property or a combination of
3 both real and personal property within 180 days of receipt of the
4 notice, and shall notify the owner of such classification. The owner, if
5 aggrieved by the county appraiser's classification, may appeal such
6 classification to the court of tax appeals pursuant to K.S.A. 79-1409,
7 and amendments thereto.

8 (b) Any property appraised as given in subsection (a) shall not be
9 reclassified within two years after the expiration of the tax exemption
10 period absent the approval of the court of tax appeals upon a hearing
11 in a decision upheld upon appeal, if any, and:

12 (1) A material physical change to such property;

13 (2) a material change in the use of such property; or

14 (3) a substantial change in directly applicable law.

15 (c) After the expiration of the two years, the appraiser shall
16 classify such property as required by K.S.A. 79-1459, and
17 amendments thereto.}

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

23 New Sec. 4. (a) {Except as provided in article 5a of chapter 79 of
24 the Kansas statutes annotated, and amendments thereto,} on or before
25 October 15 of the year preceding the tax year for which the property is
26 to be classified and appraised, the county appraiser or the taxpayer
27 may request that the director of property valuation contract with an
28 independent appraiser to classify and appraise natural gas and helium
29 processing facilities, ethanol facilities, crude oil refineries, fertilizer
30 manufacturing facilities, cement manufacturing facilities, and such
31 other complex industrial properties as otherwise requested by the
32 county appraiser or the taxpayer. Before making such request, the
33 county appraiser and the taxpayer shall be required to meet to discuss
34 the property at issue, including the suitability of the property to be
35 classified and appraised by an independent appraiser, as provided in
36 this section. After such meeting and upon request by the county or the
37 taxpayer, the director shall contract with an independent appraiser
38 from the list of appraisers as provided in subsection (b) to conduct
39 such determination of the property. Prior to entering into any contract
40 with 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. 12-1744a is hereby amended to read as
24 follows: 12-1744a. (a) At least seven days prior to the issuance of any
25 revenue bonds, the city or county shall file a statement with the state
26 court of tax appeals of such proposed issuance containing the
27 following information:

28 (1) The name of the city or county proposing to issue the revenue
29 bonds, the lessee, the guarantor, if any, the paying or fiscal agent, the
30 underwriter, if any, and all attorneys retained to render an opinion on
31 the issue;

32 (2) a legal description of any property to be exempted from ad
33 valorem taxes, including the city or county in which the facility will be
34 located;

35 (3) the appraised valuation of the property to be exempted from
36 ad valorem taxes as shown on the records of the county as of the next
37 preceding January 1. *Any listing of property shall not constitute a*
38 *classification of the property. Classification of any property acquired*
39 *during the tax exemption period shall be determined at the end of the*
40 *exemption period in accordance with section 2, and amendments thereto;*

41 (4) the estimated total cost of the facility showing a division of
42 such total cost between real and personal property;

43 (5) if the facility to be financed is an addition to or further

1 improvement of an existing facility the cost of which was financed by
2 revenue bonds issued under the provisions of this act, the date of
3 issuance of such revenue bonds, and if such facility or any portion
4 thereof is presently exempt from property taxation, the period for
5 which the same is exempt;

6 (6) the principal amount of the revenue bonds to be issued;

7 (7) the amount of any payment to be made in lieu of taxes;

8 (8) an itemized list of service fees or charges to be paid by the
9 lessee together with a detailed description of the services to be
10 rendered therefor;

11 (9) a reasonably detailed description of the use of bond proceeds,
12 including whether they will be used to purchase, acquire, construct,
13 reconstruct, improve, equip, furnish, enlarge or remodel the facility in
14 question;

15 (10) the proposed date of issuance of such revenue bonds.

16 (b) Any change in the information or documents required to be
17 filed pursuant to subsection (a) which does not materially adversely
18 affect the security for the revenue bond issue may be made within the
19 fifteen-day period prior to issuance of the revenue bonds by filing the
20 amended information or document with the state court of tax appeals.

21 (c) Any notice required to be filed pursuant to the provisions of
22 subsection (a) shall be accompanied by a filing fee, which shall be
23 fixed by rules and regulations of the state court of tax appeals, in an
24 amount sufficient to defray the cost of reviewing the information and
25 documents required to be contained in the notice.

26 (d) Information required to be filed by subsection (a) of this
27 section shall be in addition to any filing required by K.S.A. 79-210,
28 and amendments thereto.

29 (e) The state court of tax appeals may require any information
30 listed under subsection (a) deemed necessary, to be filed by a city or
31 county concerning agreements entered into prior to the effective date
32 of this act.

33 (f) The state court of tax appeals shall prepare and compile
34 annually a report containing the information required to be filed
35 pursuant to subsection (a) for each issuance of revenue bonds made
36 pursuant to K.S.A. 12-1740 et seq., and amendments thereto. Such
37 report shall be published in convenient form for the use and
38 information of the legislature, taxpayers, public officers and other
39 interested parties, and shall be available on January 10 of each year.}

40 Sec. 10. K.S.A. 2013 Supp. 79-251 is hereby amended to read as
41 follows: 79-251. Prior to the granting of an exemption for any
42 property from ad valorem taxation pursuant to the provisions of
43 section 13 of article 11 of the ~~Kansas~~ constitution *of the state of Kansas*,

1 the board of county commissioners of any county or the governing
2 body of any city, as the case requires, shall be required to do the
3 following:

4 (a) Develop and adopt official policies and procedures for the
5 granting of such exemptions including:

6 (1) The required preparation of an analysis of the costs and
7 benefits of each exemption, including the effect of the exemption on
8 state revenues, prior to the granting of such exemption;

9 (2) a procedure for monitoring the compliance of a business
10 receiving an exemption with any terms or conditions established by
11 the governing body for the granting of the exemption;

12 (b) conduct a public hearing on the granting of such exemption.
13 Notice of the public hearing shall be published at least once seven days
14 prior to the hearing in the official city or county newspaper, as the
15 case requires, and shall indicate the purpose, time and place thereof.
16 In addition to such publication notice, the city or county clerk, as the
17 case requires, shall notify in writing the governing body of the city or
18 county and unified school district within which the property proposed
19 for exemption is located; and

20 (c) adopt a resolution containing the following findings of fact:

21 (1) That the property for which the exemption is to be granted
22 will be used exclusively for the purposes specified in section 13 of
23 article 11 of the ~~Kansas~~ constitution *of the state of Kansas*; and

24 (2) if the business using the property is relocating from one city or
25 county to another within this state, that the business has received
26 approval of the secretary of commerce prior to qualifying for the
27 exemption upon a finding by the secretary that such relocation is
28 necessary to prevent the business from relocating outside this state.

29 {(d) Any listing of property submitted by the business as part of
30 the exemption process shall not constitute a classification of the
31 property. Classification of any property acquired during the tax
32 exemption shall be determined at the end of the exemption period in
33 accordance with section 2, and amendments thereto.}

34 New Sec. 11. (a) In accordance with the provisions of section 1 of
35 article 11 of the constitution of the state of Kansas, all commercial and
36 industrial machinery used directly in the manufacture of cement, lime
37 or similar products including: Kilns, pumps, lifts, process fans, bucket
38 elevators, compressors, raw mills, hammer mills, grinders, conveyors,
39 ball mills, mixers, storage tanks, scales, crushers, reclaimers,
40 processing vessels, filters, electric motors, cement and clinker coolers,
41 finish mills, separators, electric hoists, stackers, roller mills, clinker
42 breakers, hydraulic and lubricating systems used directly in
43 manufacturing and processing activities, analyzers, aeration systems,

1 air pollution control equipment, bulk loading systems, material and
2 gas flow distribution gates and handling and transport systems, except
3 public utility property valued and assessed pursuant to K.S.A. 79-5a01
4 et seq., and amendments thereto, are hereby defined as commercial
5 and industrial machinery and equipment, and shall be classified for
6 property tax purposes as tangible personal property within subclass 5
7 of class 2 of section 1 of article 11 of the constitution of the state of
8 Kansas. All such property shall be valued in accordance with the
9 provisions of subsection (b)(2)(E) of K.S.A. 79-1439, and amendments
10 thereto.

11 (b) The provisions of this section shall apply to all taxable years
12 commencing after December 31, 2013.

13 Sec. 12. K.S.A. 2013 Supp. 79-5107 is hereby amended to read as
14 follows: 79-5107. (a) Except as provided in subsection (e), the tax
15 imposed by this act upon any motor vehicle, other than a motor
16 vehicle which replaces a motor vehicle previously registered and taxed
17 in this state and to which registration plates are transferred, which
18 has been acquired, or brought into the state, or for any other reason
19 becomes subject to registration after the owner's regular annual
20 motor vehicle registration date, shall become due and payable at the
21 time such motor vehicle becomes subject to registration under the
22 laws of this state and the amount of tax to be paid by the owner for the
23 remainder of the tax year shall be an amount which is equal to $\frac{1}{12}$ of
24 the tax which would have been due upon such motor vehicle for the
25 full registration year, multiplied by the number of full calendar
26 months remaining in the registration year of the owner of such
27 vehicle. Such tax shall be paid at the time of the registration of such
28 motor vehicle.

29 (b) Except as provided in subsection (e), the tax upon a motor
30 vehicle, which replaces a motor vehicle previously registered and
31 taxed in this state and to which registration plates are transferred,
32 which is registered at any time other than the annual registration date
33 prescribed by law for the registration of such motor vehicle, shall be in
34 an amount equal to the amount by which: (1) One-twelfth of the tax
35 which would have been due upon such replacement motor vehicle for
36 the full registration year multiplied by the number of full calendar
37 months remaining in the registration year for such motor vehicle,
38 exceeds (2) one-twelfth of the tax which would have been due for the
39 full registration year upon the motor vehicle replaced multiplied by
40 the number of full calendar months remaining in such registration
41 year. Such tax shall be paid at the time of registration of such
42 replacement vehicle.

43 (c) Whenever the tax imposed under this act has been paid upon

1 any motor vehicle and title to such vehicle is transferred and no
2 replacement vehicle is substituted therefor such taxpayer shall be
3 entitled to a refund in an amount equal to $\frac{1}{12}$ of the tax due upon such
4 motor vehicle for the full registration year, multiplied by the number
5 of full calendar months remaining in such registration year. Whenever
6 the tax imposed under this act upon any replacement motor vehicle
7 for the remainder of the registration year is less than the tax paid on
8 the motor vehicle replaced for the remainder of such registration year,
9 the taxpayer shall be entitled to a refund in the amount by which the
10 tax paid upon the vehicle replaced exceeds the tax due upon the
11 replacement vehicle. All refunds shall be paid by the county treasurer
12 from the moneys received from taxes upon motor vehicles imposed by
13 this act which have not been distributed. No refund shall be made
14 under the authority of this subsection for a sum less than \$5.

15 (d) Whenever the tax imposed under this act has been paid upon
16 any motor vehicle and the owner thereof has established residence in
17 another state during such vehicle's registration year, such owner shall
18 be entitled to a refund of such taxes in an amount equal to $\frac{1}{12}$ of the
19 tax paid upon such motor vehicle for the full registration year,
20 multiplied by the number of full calendar months remaining in such
21 registration year after the month of establishing residence in another
22 state. No such refund shall be allowed unless and until the owner
23 submits to the county treasurer evidence of a valid driver's license and
24 motor vehicle registration in another state, and surrenders the Kansas
25 license plate. All refunds shall be paid by the county treasurer from
26 the moneys received from taxes upon motor vehicles which have not
27 been distributed. No refund shall be made for a sum less than \$5.

28 (e) (1) No tax shall be levied under the provisions of this act upon
29 not more than two motor vehicles which are owned by a resident
30 individual:

31 (A) Who is in the full-time military service of the United States, is
32 absent from this state solely by reason of military orders on the date of
33 such individual's application for registration and such motor vehicles
34 are maintained by such individual outside of this state; ~~or~~

35 (B) who is a member of the military service of the United States
36 and is mobilized or deployed on the date of such individual's
37 application for registration; *or*

38 (C) *who is a full-time member of the military service of the United*
39 *States, and is stationed in Kansas, or who is a full-time active guard and*
40 *reservist member of the Kansas army or air national guard or a Kansas*
41 *unit of the reserve forces of the United States under authority of title 10 or*
42 *title 32 of the U.S. code, and is stationed or assigned in Kansas.*

43 (2) The owner of a motor vehicle not subject to tax pursuant to

1 the provisions of subsection (e)(1) who has paid the tax levied under
2 the provisions of K.S.A. 79-5101, and amendments thereto, may apply
3 for a refund with the county treasurer not later than one year from the
4 effective date of this act. The county treasurer shall refund any such
5 taxes previously paid by such owner of a motor vehicle.

6 The provisions of this subsection shall be applicable on and after
7 December 31, 2003 {2013.}

8 Sec. ~~9~~. {13.} K.S.A. 2013 Supp. {12-1744a, 79-251, 79-1609 and
9 79-5107} is {are} hereby repealed.

10 Sec. ~~2-10~~. {14.} This act shall take effect and be in force from and
11 after its publication in the statute book.