

**BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
EQUALIZATION APPEALS OF DODGE
CITY COOPERATIVE EXCHANGE FOR
THE YEARS 2013 & 2014 IN GRAY
COUNTY, KANSAS

Docket Nos. 2013-2335-EQ
& 2014-2560-EQ

SUMMARY DECISION

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in these matters on April 17, 2015. The Taxpayer, Dodge City Cooperative Exchange, appeared by Marc Kliever, Attorney; Gerald Kemmerer, Witness; and, Fred Norwood, Witness. The County of Gray appeared by Michael Giardine, Attorney; and, Jerry Denney, Gray County Appraiser. County Exhibits A and B, and Taxpayer Exhibits 1 through 18 were admitted into evidence. The tax years at issue are 2013 and 2014.

The subject matters of these tax appeals are located at 706 Bent Street, Ensign, Gray County, Kansas, also known as Parcel Identification Number # 035-167-36-0-30-02-001.00-0 and, per the Taxpayer's proposed findings of fact and conclusions of law, are described as follows:

One 80' 45,000 bushels per hour Essmueller drag conveyor.

One 107' 45,000 bushels per hour Essmueller drag conveyor.

One 235' 40,000 bushels per hour Hi Roller belt conveyor.

Two 18" bin unloading screw conveyors, 57' long.

Two 18" by 35' belt feeder square spouts.

Two 18" square transitions.

Two 24" by 15' square unloading spouts including side draw slide gates.

Two overhead connecting bridges.

Aeration system components for Bin R-5 and Bin R-6.

Temperature monitoring system components for Bin R-5 and Bin R-6.

Compuweigh Train Loadout remote communications module components.

The Board rules that the evidentiary burden is on the Taxpayer as these matters are essentially tax exemption requests. The Taxpayer requests that the subject of these appeals be considered commercial and industrial personal property and therefore, exempt from ad valorem taxation pursuant to K.S.A. 2014 Supp. 79-223 (b) *First*. The County considers the subject property as fixtures to real estate.

The subject properties in these matters are the same properties that the Board considered for the 2011 tax year. *See* Docket Number 2012-726-PR. In that matter, the Board found that after applying the three-part fixture test that the subject property should be considered real estate with the except of the temperature monitoring system components for Bin R-5 and Bin R-6.

Unlike the 2011 tax year matter, Mr. Frank Norwood testified concerning the construction of the elevator and installation of the subject property. Mr. Norwood is a fourth generation elevator builder.

Based on the evidence presented at the hearing, duly weighing such evidence, the Board finds that the subject properties, as described above, except for the temperature monitoring system components for Bin R-5 and Bin R-6, for tax years 2013 and 2014, are determined to be real estate. The temperature monitoring system components for Bin R-5 and Bin R-6 shall be considered personal property and would be exempt pursuant to K.S.A. 790-226 (b) *First*.

IT IS THEREFORE ORDERED that the finding made hereinabove, shall be, and is hereby, adopted by this Board.

This order is a summary decision pursuant to K.S.A. 74-2426(a), and amendments thereto. Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. *See* K.S.A. 74-2426(b), and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. *See* K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the

Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. *See* K.S.A. 74-2433(f), and amendments thereto.

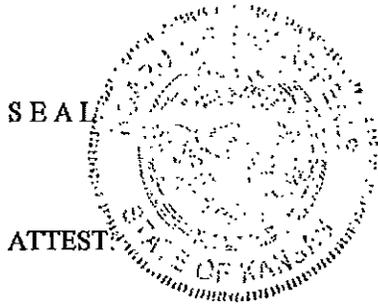
Rather than filing a petition for reconsideration or appealing this order, any aggrieved party may request, within 14 days of receiving this order, a full and complete opinion be issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto.

If both parties are aggrieved by this order, and one party timely appeals this order to the district court (which necessitates a trial de novo pursuant to K.S.A. 74-2426(c)(4)(A)) and amendments thereto, then this order will be deemed final and will render moot any pending petition for reconsideration or request for a full and complete opinion filed by the other party. If both parties are aggrieved by this order, one party timely appeals this order to the court of appeals (which would involve appellate review under the Kansas judicial review act), and the other party timely files a petition for reconsideration or request for a full and complete opinion, then this order will be deemed non-final and the Board will proceed to render an order regarding reconsideration or a full and complete opinion, as applicable.

Unless an aggrieved party files a timely written request for a full and complete opinion or a timely petition for reconsideration as set forth herein, this order will be appealable by that party only by timely appeal to the district court or the court of appeals as set forth above.

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

IT IS SO ORDERED



THE KANSAS BOARD OF TAX APPEALS

Ronald C. Mason
RONALD C. MASON, BOARD MEMBER

James D. Cooper
JAMES D. COOPER, BOARD MEMBER

Arden Siegfried
ARLEN SIEGFREID, MEMBER PRO TEM

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2013-2335-EQ & 2014-2560-EQ and any attachments thereto, was placed in the United States Mail, on this 12th day of June, 2015, addressed to:

Dodge City Cooperative Exchange
710 West Trail Street
Dodge City, Kansas 67801-5419

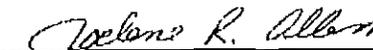
Marc Kliewer, Attorney
Kliewer, Chartered
Post Office Box 411
Garden City, Kansas 67846

Jerry L. Denney, Gray County Appraiser
Gray County Courthouse
Post Office Box 487
Cimarron, Kansas 67835-0487

Michael Giardine, Assistant Gray County Attorney
Post Office Box 466
Cimarron, Kansas 67835

Sheryl Plotner, Gray County Treasurer
Gray County Courthouse
Post Office Box 507
Cimarron, Kansas 67835-0507

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joelene R. Allen, Secretary