

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

IN THE MATTER OF THE PROTESTS  
OF TYLER POINTE, L.L.C. FOR THE  
YEAR 2013 IN SEDGWICK COUNTY,  
KANSAS

Docket Nos. 2014-1059-PR  
through 2014-1063-PR

IN THE MATTER OF THE PROTEST OF  
BROWN, CLEVELAND H.V. FOR THE  
YEAR 2013 IN SEDGWICK COUNTY,  
KANSAS

Docket No. 2014-1064-PR

AND

IN THE MATTER OF THE PROTEST OF  
FANNING, MARY ANN FOR THE YEAR  
2013 IN SEDGWICK COUNTY, KANSAS

Docket No. 2014-1065-PR

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**ORDER**

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 consolidated hearing in these matters on September 19, 2014. The above captioned Taxpayers (herein "Taxpayer") appeared by Gerald Capps, Attorney. Sedgwick County, Kansas (the "County") was represented by Patricia Parker, Attorney. County Exhibit #1 and #2 (for each Docket) as well as Taxpayer Exhibit #1 and Taxpayer Rebuttal Exhibit #1 were admitted into evidence. The Board issued its *Summary Decision* on October 1, 2014 and, on October 14, 2014, the Taxpayer filed a request for a full and complete opinion.

After considering all of the evidence and arguments presented, the Board finds and concludes as follows:

*Jurisdiction*

The Board has jurisdiction of the subject matter and the parties, as protest applications have been filed pursuant to K.S.A. 2013 Supp. 79-2005. The tax year in issue is 2013.

*Issues Presented / Subject Property*

The subject property consists of seven contiguous parcels of land located in Wichita, Kansas. The sole issue before the Board is classification of the subject property. The parcels are identified as follows:

Docket No. 2014-1059-PR,  
Parcel ID # 087-135-16-0-22-01-002.00,  
Docket No. 2014-1060-PR,  
Parcel ID # 087-135-16-0-22-01-001.00,  
Docket No. 2014-1061-PR,  
Parcel ID # 087-135-16-0-22-01-003.00,  
Docket No. 2014-1062-PR,  
Parcel ID # 087-135-16-0-22-01-004.00,  
Docket No. 2014-1063-PR,  
Parcel ID # 087-135-16-0-22-01-005.00,  
Docket No. 2014-1064-PR,  
Parcel ID # 087-135-16-0-22-01-007.00,  
and  
Docket No. 2014-1065-PR,  
Parcel ID # 087-135-16-0-22-01-006.00,  
all located in Sedgwick County, Kansas.

*Hearing Evidence*

The subject parcels collectively comprise approximately 15 acres of land located in the 13<sup>th</sup> and Tyler area in Wichita, Kansas. The Taxpayer purchased the parcels on March 28, 2013. The property was previously owned by the Unified School District No. 259 and, as of the January 1, 2013 assessment date, the property was exempt from ad valorem taxes as property owned by a school district. Due to the Taxpayer's acquisition of the property in March 2013, the County changed the classification of the property to vacant property and issued a tax notice to the Taxpayer.

The land had broom and other grasses growing as of the January 1, 2013 assessment date. On September 1, 2013, the Taxpayer entered into a lease to have a farmer, Tim Hendricks, hay the grass on the property. The farm lease gives all profits from sale of crop from the parcels to go to the farmer to offset the cost of haying the parcel. The school district's maintenance crew, erroneously assuming the school district still owned the property, mowed the property after the March 2013 sale and there has been no hay for Hendricks to bale in calendar year 2013.

The sales validation questionnaire for the March 2013 sale of the property was completed by the buyer and indicated the subject property would be used as agricultural land.

The County indicated that it did not observe any agricultural activities on the property as of January 1, 2013 or as of the sale date. Based thereon, the County classified the property as vacant land. The County classified the subject property as agricultural use land for the 2014 tax year.

### *Applicable Law and Board Conclusions*

The sole issue before the Board is the proper classification of the subject property for the tax year in issue. Pursuant to K.S.A. 2013 Supp. 79-2005, and as agreed to by the parties at hearing, the Taxpayer bears the burden of initiating the production of evidence and burden of proof herein.

All real and personal property in Kansas is subject to taxation on a uniform and equal basis unless specifically exempted. Kan. Const., Art. 11, § 1(a); K.S.A. 79-101. It is the duty of the legislature to provide for a uniform and equal rate of assessment and taxation. *See id.* Pursuant to its constitutional dictate, the legislature has enacted a statutory scheme to ensure property is classified and appraised for ad valorem tax purposes in a uniform and equal manner.

Article 11, Section 1 of the Kansas Constitution provides classifications for purposes of assessment:

“Class 1 shall consist of real property. Real property shall be further classified into seven subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Real property used for residential purposes including multi-family residential real property and real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located: 11 1/2%
- (2) Land devoted to agricultural use which shall be valued upon the basis of its agricultural income or agricultural

productivity pursuant to section 12 of  
article 11 of the constitution: 30%

- (3) Vacant lots: 12%
- (4) Real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, and which is included in this subclass by law: 12%
- (5) Public utility real property, except railroad real property which shall be assessed at the average rate that all other commercial and industrial property is assessed: 33%
- (6) Real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use: 25%
- (7) All other urban and rural real property not otherwise specifically subclassified: 30%.”

The Taxpayer has requested that the subject land currently classified as vacant be re-classified to “land devoted to agricultural use” – the second subclassification of real estate in Article 11, Section 1 of the Kansas Constitution. K.S.A. 2013 Supp. 79-1476 defines “land devoted to agricultural use” as follows:

“[L]and devoted to agricultural use” shall mean and include land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. *Land devoted to agricultural use shall not include those lands which are used for recreational purposes, . . . suburban residential acreages,*

*rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.*  
. . . (Emphasis added.)

There are well-established rules of statutory and constitutional construction applicable to tax matters. The right to tax is penal in nature, and this right must be strictly construed in favor of the taxpayer. See *J.G. Masonry, Inc. v. Department of Revenue*, 235 Kan. 497, 500, 680 P.2d 291 (1984). Tax statutes will not be extended by implication beyond the clear import of the language employed therein, and their operation will not be enlarged so as to include matters not specifically embraced. *Director of Taxation v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 455, 691 P.2d 1303 (1984). Where there is reasonable doubt as to the meaning of a taxing act, it will be construed most favorably to the taxpayer. *National Cooperative Refinery Ass'n v. Board of McPherson County Comm'rs*, 228 Kan. 595, 597, 618 P.2d 1176 (1980).

The Board does not find evidence indicating the subject property was “devoted” to any agricultural endeavors as of the January 1, 2013 assessment date or as of the Taxpayer’s acquisition date. Pursuant to K.S.A. 79-1476, “land devoted to agricultural use” is land devoted to the production of plants, animals, or horticultural products. “Devote” is defined as “to give over or direct (as time, money, or effort) to a cause, enterprise, or activity.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 348 (1983). The record evidence indicates that the subject property was simply a parcel owned by the school district containing brohm and other grasses, that was regularly mowed for general maintenance purposes. Given this undisputed evidence, the Board is not persuaded that the primary function of the subject property was for agricultural endeavors.

As evidence to support its claim, the Taxpayer presented a farm lease executed in September 2013 calling for any crop on the property to be baled. Examination of applicable tax and valuation statutes indicates that January 1 of the tax year in issue is the date of assessments. See generally, K.S.A. 79-503a, K.S.A. 79-1455, K.S.A. 79-1459(e), and K.S.A. 79-1460(a). Further, County appraisers must determine the classification of real property in a manner prescribed by the director of the Division of Property Valuation (“PVD”). See K.S.A. 79-505. PVD Directive # 99-038 addresses the relevant date for classification of real property and provides, in pertinent part, as follows:

Property should be assessed on an annual basis based upon the property’s use on January 1st. Property such as agricultural land, which has seasonal uses typical to the

trade that do not necessarily take place on January 1st or on a 12-month basis, shall be classified annually based upon the overall use *during the prior year or operating period.*

PVD Directive # 99-038 (February 24, 2000), p. 1.  
(Emphasis added.)

The Kansas Court of Appeals addressed the propriety of this PVD Directive in *In re Miami County Appraiser/SBKC Service Corp., Inc.*, 277 P.3d 1193, 2012 WL 2149829 (Kan. App.) (unpublished decision issued June 8, 2012). In sustaining this Court's holding that the property was not land devoted to agricultural use, the Court of Appeals gave its imprimatur to PVD Directive #99-038 and the Directive's instruction that county appraisers consider activity occurring on a property in the preceding calendar year for its January 1st classification determination. *Id.* at \*1 & \*2<sup>1</sup>. Noting that counties were required to send out classification and valuation notices by March 1 for the given tax year, the Court of Appeals found it unreasonable to expect a county appraiser to rely on post-January 1 activity for its classification determination. *Id.* at \*2.

The record indicates that the property was not devoted to any agricultural endeavors as of the January 1, 2013 assessment date or any time in the preceding calendar year. Moreover, *In re Miami County Appraiser/SBKC Service Corp., Inc.*, specifically held that "the mere act of signing a lease is not enough to warrant classification of the land as agricultural." *Id.* at \*1. As such, the Taxpayer's entering farm lease, in and of itself, is not determinative to this classification dispute. The weight of evidence regarding the subject property's use both as of the 2013 assessment date and in all other relevant periods surrounding this date does not support a finding that the property was land devoted to agricultural use as defined by K.S.A. 79-1476. As such, the Board finds that the Taxpayer has not come forth with evidence indicating that the subject property's vacant classification is in error. As such, the subject property's classification as vacant is upheld for the 2013 tax year.

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<sup>1</sup> *In re Miami County Appraiser/SBKC Service Corp., Inc.* is an unpublished decision of the Kansas Court of Appeals. Pursuant to Kansas Supreme Court Rule 7.04(g)(2)(B), the decision "is not binding precedent ... but has persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court and would assist the court in disposition of the issue." Examination of the three Kansas appellate cases adjudicating disputes involving the agricultural use value classification indicates none of these matters specifically referenced PVD Directive #99-038. See *Board of Johnson County Comm'rs v. Smith*, 18 Kan. App. 2d 662, 857 P.2d 1386 (1993); *In re Oakhill Land Co.*, 46 Kan. App. 2d 1105, 1116, 269 P.3d 876, 883 (2012); and *In re Miami County Appraiser/SBKC Service Corp., Inc.* As such, pursuant to Rule 7.04(g)(2)(B), *SBKC Service Corp., Inc.* has persuasive value regarding the effect and application of PVD Directive #99-038.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated herein, for the 2013 tax year, the subject parcels shall be classified as vacant property.

This order is a full and complete opinion 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.

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)), 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.

Unless an aggrieved party files 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, BOARD MEMBER

  
JAMES D. COOPER, BOARD MEMBER

  
ARLEN SIEGFREID, MEMBER *PRO TEM*

  
JOYLENE 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 No. 2014-1059-PR *et al.* and any attachments thereto, was placed in the United States Mail, on this 31<sup>st</sup> day of December, 2014, addressed to:

Gary L. Oborny, Owner  
Tyler Pointe LLC  
8111 E 32nd St N Ste 101  
Wichita, KS 67226

Paul Vincent Fanning  
Mary Ann Fanning  
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Cleveland H V Brown  
75 Ruscoe Rd  
Wilton, CT 06897

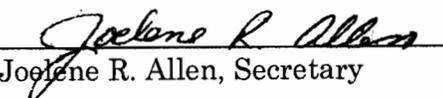
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Linda Kizzire, County Treasurer  
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

  
Joeline R. Allen, Secretary