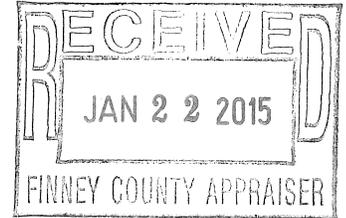


BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS



IN THE MATTER OF THE
APPLICATION OF
PETROSANTANDER (USA), INC.
FOR RELIEF FROM A
TAX GRIEVANCE
IN FINNEY COUNTY, KANSAS

Docket No. 2014-2337-TG

ORDER ON RECONSIDERATION

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in this matter on November 10, 2014. The Taxpayer, PetroSantander (USA), Inc. appeared by counsel Ken Dannenberg and Zach Wiggins. Finney County appeared by counsel Thomas J. Burgardt. The Board admitted Taxpayer Exhibits #1 through #12 and County Exhibit #1.

An *Agreed Order* certified December 11, 2014 extended the deadline for the parties to file their findings of fact and conclusions of law to January 9, 2015. The County's Proposed Findings of Fact were filed January 9, 2015. The Board notes that the Taxpayer's Closing Brief and Proposed Findings of Fact and Conclusions of Law were filed by electronic mail with a sent time of 5:19 p.m. on Friday, January 9, 2015. Pursuant to K.A.R. 94-5-9 and 94-5-10, the date stamp for filing Taxpayer's brief is Monday, January 12, 2015. When one party fails to file a timely pleading, or fails to exchange exhibits in a timely fashion, the issue of striking the pleading or deeming the documents inadmissible depends on whether and to what extent the other party is prejudiced by such dilatoriness. *See Nelson v. City of Wichita*, 217 F. Supp. 2d 1179, 1188 (D. Kan. 2002). Upon review, the Board finds it appropriate to consider the Taxpayer's submission because it was a post-hearing brief and the County is not prejudiced by the late filing.

Upon reconsideration, the Board finds and concludes as follows:

A tax grievance application was filed pursuant to K.S.A. 79-1702 on May 13, 2014. In an *Order* certified August 1, 2014, the Board dismissed the application for lack of jurisdiction. On August 19, 2014, the applicant timely filed a petition for reconsideration pursuant to K.S.A. 74-2426 and K.S.A. 77-529. In an *Order Granting Reconsideration and Notice of Hearing* certified September 3, 2014, the

Board granted reconsideration of the decision and scheduled a hearing in the matter. An evidentiary hearing was conducted on November 10, 2014 to present evidence for both this tax grievance application and a payment under protest appeal, Docket No. 2014-4076-PR, for which jurisdiction was a question. Both matters arose from the same set of facts. The Board is rendering separate opinions for the two matters because the matters are in different stages of appeal.

The subject matter of this tax grievance application an oil lease located in Finney County, Kansas known as ID # 028-HAFLICH 1-8, 2-8, 3-8 LEASE for tax year 2013.

K.S.A. 79-1701, et seq. Statutory Scheme

K.S.A. 79-1701, *et seq.*, establishes a tax grievance procedure that is intended to address the correction of certain clerical errors in the assessment and taxation process. *See In re Protest of United Ag Services, Inc.*, 37 Kan. App. 2d 902, 913-914, 159 P.3d 1050, *rev. denied* (2007).

Pursuant to K.S.A. 79-1702, if a taxpayer, municipality or taxing district has a grievance described under the provisions of K.S.A. 79-1701 or K.S.A. 79-1701a, which is not remediable thereunder solely because not reported within the time prescribed or which was remediable thereunder and reported within the time prescribed but which has not been remedied, such grievance may be presented to the Board of Tax Appeals.

K.S.A. 79-1701 provides in part as follows:

“The county clerk shall, prior to November 1, correct the following clerical errors in the assessment and tax rolls for the current year, which are discovered prior to such date:

- (a) Errors in the description or quantity of real estate listed;
- (b) errors which have caused improvements to be assessed upon real estate when no such improvements were in existence;

...

- (e) errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county;

....”

In addition, K.S.A. 79-1702 specifically states that “[e]rrors committed in the valuation and assessment process that are not specifically described in K.S.A. 79-1701, and amendments thereto, shall be remediable only under the provisions of K.S.A. 79-2005, and amendments thereto.”

Analysis

The Board of Tax Appeals is a creature of the legislature. “Its authority and power is only such as is expressly or impliedly given by legislative enactment. If it attempts to exercise jurisdiction over a subject matter not conferred by the Legislature, its orders with respect thereto are without authority of law and void.” *Walkemeyer v. Stevens County Oil & Gas Co.*, 205 Kan. 486, 491, 470 P.2d 730 (1970) (citations omitted); *Vaughn v. Martell*, 226 Kan. 658, 660-661, 603 P.2d 191 (1979).

The tax grievance statutory scheme is intended to address the correction of certain clerical errors in the assessment and taxation process. The types of clerical errors that can be corrected by this procedure are limited to the specific clerical errors listed in K.S.A. 79-1701. *See In re Protest of United Ag Services, Inc.*, 37 Kan. App. 2d 902, 914, 159 P.3d 1050, *rev. denied* (2007). Other errors committed in the valuation and assessment process not specifically described in K.S.A. 79-1701 are remediable only under the provisions of K.S.A. 79-2005, a payment under protest appeal, or under K.S.A. 79-1448 and K.S.A. 79-1609, an equalization appeal. “Our appellate courts have construed this statute [K.S.A. 79-1701] rather strictly to limit relief to the specific errors listed.” *Id.* at 914.

The Applicant/Taxpayer seeks relief pursuant to K.S.A. 79-1701(a) and (b). Upon review, the Board finds that these subsections are not applicable because they relate to descriptions and assessment of real estate. In Kansas, oil and gas leases are personal property for purposes of valuation and taxation. K.S.A. 79-329.

Alternatively, the Applicant seeks relief pursuant to K.S.A. 79-1701(e), which defines a clerical error subject to correction to include “errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county.”

Mr. Cook testified that some of the production of six other leases was mistakenly included on the subject rendition as the Stewart East WF (Water Flood) Field by his office. There is no Stewart East WF Field, and it should have been the Haflich lease. The KDOR ID number on the subject rendition was the number for the Haflich lease. A rendition for a particular lease should reflect production of the wells located on real estate described in the lease. The evidence shows that the subject rendition overstated the production of the Haflich lease because it included

production from certain wells (i.e. wells are not located on the Haflich lease) a second time. The Board finds that this qualifies as a clerical error whereby the taxpayer has been assessed twice in the same year for the same property. *See In re Dillon Real Estate Co., Inc.*, 43 Kan.App.2d 581, 588, 228 P.3d 1080 (2010) (“Parsing each such error for the reason it occurred, ... is simply not required by the statute.”). The subject rendition should be corrected to reflect only the production, income and expenses of the Haflich lease (wells on the Haflich lease) and a refund or abatement provided for the over-assessment.

The Board finds that it has jurisdiction of the subject matter and the parties pursuant to K.S.A. 79-1702 and that the error is a clerical error described in K.S.A. 79-1701(e). The Board concludes that the Applicant’s request for an abatement or refund of taxes over-assessed for tax year 2013 is granted.

IT IS THEREFORE ORDERED that the tax grievance application is granted.

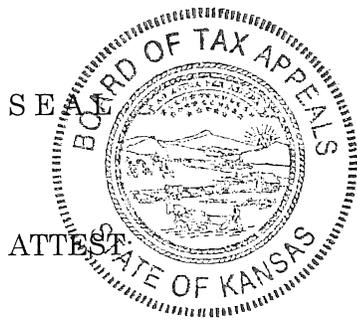
IT IS FURTHER ORDERED that the appropriate officials shall correct the county’s records to comply with this order and provide a refund to the applicant, if applicable.

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.

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 petition shall also serve a complete copy of the petition on all other parties.

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

Arlen Siegfried
ARLEN SIEGFREID, MEMBER PRO TEM

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

I, Joeline R. Allen, Secretary of the Kansas Board of Tax Appeals, do hereby certify that a true and correct copy of this order in Docket No. 2014-2337-TG, and any attachments thereto, was placed in the U.S. mail, on this 20th day of January, 2015, addressed to:

William F. Aspinwall, Land Manager
PetroSantander (USA) Inc.
6363 Woodway, Ste 350
Houston, TX 77057

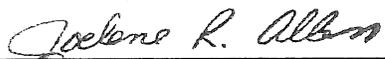
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joeline R. Allen, Secretary