

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

IN THE MATTER OF THE PROTESTS OF
TREGO COUNTY APPRAISER/SAMUEL
GARY, JR. & ASSOCIATES, INC. FOR
THE YEAR 2014 IN TREGO COUNTY,
KANSAS

Docket Nos. 2015-5988-PR
through 2015-5990-PR

FULL & COMPLETE 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 February 8, 2016. The Taxpayer, Trego County Appraiser/Samuel Gary Jr. & Associates, Inc., appeared by Bradley Stout, Attorney, and Kenton Hupp, Tax Representative. The County of Trego appeared by Rachelle Standley, Trego County Appraiser, and Tony A. Potter, Trego County Attorney. Appearing as a witness for Trego County was Lynn Kent, Oil and Gas Manager of the Kansas Department of Revenue, Division of Property Valuation (P.V.D.). Separate County Exhibits 1 through 15 were admitted in each of the three matters. Taxpayer Exhibits "A" through "S" were admitted in all three matters combined. The tax year in issue is 2014.

The Board has jurisdiction of the subject matters and the parties, as tax protests have been properly and timely filed pursuant to K.S.A. 2015 Supp. 79-2005.

The subject matters of these tax appeals are as follows:

Docket Number 2015-5988-PR

Personal property located in Section 24, Township 12 South,
Range 23 West of the Sixth Principal Meridian, Trego County,
Kansas, known as 098-GLENN *ET AL.* 1-24 LEASE.

Docket Number 2015-5989-PR

Personal property located in Section 34, Township 12, Range
23 West of the Sixth Principal Meridian, Trego County,
Kansas, known as 098-FABRIZIUS *ET AL.* 1-34 LEASE.

Docket Number 2015-5990-PR

Personal property located in Section 8, Township 12 South,
Range 22 West of the Sixth Principal Meridian, Trego County,
Kansas, known as 098-12-22-8-H3 (BABB 2) LEASE.

The subject properties are new oil leases that began production in the latter half of 2013. For the 2014 appraisal, the County argues that the 2014 Kansas Oil and Gas Guide should be followed by annualizing the 2013 production, applying an assumed 30% decline rate, and applying a 40% discount pursuant to K.S.A. 2015 Supp. 79-331 (b).

The County admitted that its original appraised values were not the result of properly appraising the subject properties but instead using the Taxpayer's data to set values in an attempt to forestall any potential appeals during a period of a vacancy in the county appraiser's office.

The Taxpayer requests that the decline rate be set at the 50% maximum and that flush production be disregarded. The Taxpayer requests that the Board uphold the decisions of the small-claims hearing officer.

The pertinent working interest appraised values are as follows:

Docket Number	Lease Name	Original Appraised Value	Small-Claims decision	County Requested Value
2015-5988-PR	Glenn	\$ 567,195	\$306,463	\$1,127,196
2015-5989-PR	Fabrizius	464,740	204,664	624,965
2015-5990-PR	Babb 2	1,476,637	583,099	3,878,482

The Board finds that the Kansas Court of Appeals' decision in *In re Tax Appeals of EOG Resources, Inc.* 46 Kan. App. 2d 821, 265 P.3d 1207 (2011) is very instructive in this matter. The *EOG* decision sets forth how oil leases are to be appraised where there are but a few months flush production prior to the appraisal date.

Keeping in line with *EOG*, annualization for all production prior to April 1, 2014 should be calculated and the K.S.A. 2015 Supp. 79-331 (b) 40% discount should be applied to the income and expenses. As the evidence shows that the decline rate of the subject properties is in excess of 30%, the assumed 30% decline rate should automatically not be adopted. In fact, the decline rate appears to be in excess of 50%, therefore, the present worth factor used should be based on the maximum decline rate of 50%.

While the County Appraiser is charged to follow the Guide, the appraiser may deviate from the guide on an individual basis and in an attempt to arrive at fair market value. The evidence shows here that such a deviation is acceptable.

Pursuant to K.S.A. 2015 Supp. 74-2433f (d), the Board rules that the evidentiary burden is on the County. Based on the evidence presented at the hearing, duly weighing such evidence, the Board determines that the working interest appraised values of the subject properties for tax year 2014 should be adjusted accordingly. The Board notes that pursuant to K.S.A. 2015 Supp. 79-331 (a), the valuations of the royalty interests should be similarly adjusted.

IT IS THEREFORE ORDERED that the working interest appraised values of the subject properties for 2014 shall be as set forth below:

Docket Number	Lease Name	Working Interest Appraised Value
2015-5988-PR	Glenn	\$ 420,108
2015-5989-PR	Fabrizius	235,378
2015-5990-PR	Babb 2	1,307,950

IT IS FURTHER ORDERED that the appropriate Trego County officials shall correct their records to comply with this order, re-compute the taxes owed by the Taxpayer, and issue a refund for any overpayment.

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)) 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, then this order will be deemed non-final and the Board will proceed to render an order regarding reconsideration.

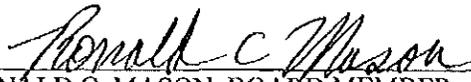
Unless an aggrieved party files a timely petition for reconsideration as set forth herein, this order will be appealable by that party only by timely appeal to the district court or the court of appeals as set forth above.

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


DEVIN SPRECKER, BOARD MEMBER


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. 2015-5988-PR through 2015-5990-PR and any attachments thereto, was placed in the United States Mail, on this 25th day of March, 2016, addressed to:

Samuel Gary, Jr., President
Samuel Gary, Jr. and Associates, Inc.
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1515 Wynkoop Street
Denver, Colorado 80202

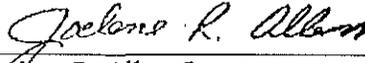
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joelene R. Allen, Secretary