

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2643

As Amended by House Committee on Taxation

Brief*

HB 2643, as amended, would seek to retroactively clarify legislative intent from 2006 when a property tax exemption for certain commercial and industrial machinery and equipment was enacted by determining the circumstances under which property could be classified as personal property or real property. In making the classification determination, county appraisers would be required to conform to the factors set forth in the personal property guide promulgated by the Department of Revenue's Division of Property Valuation (PVD). Commercial and industrial machinery and equipment that is used in a manufacturing, industrial, commercial or retail process would be deemed personal property. Where the classification of property may not be clearly determined by its use, appraisers would be required to utilize a three-part test relative to deciding whether it is personal or real. The three-part test involves, (1) annexation to real property; (2) adaptation to the use of the part of the realty to which it is attached; and (3) the intention of the party making the annexation.

Additional provisions of the bill would authorize taxpayers or county appraisers to request that PVD contract with independent appraisers to classify and appraise certain "complex" properties. The PVD would be required to contract with qualified appraisers who are certified real property appraisers with at least three years of experience in classifying and appraising complex properties. Counties would be responsible for paying all reasonable costs of the independent classifications and appraisals, regardless of which party made the request. Final determinations made by

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

independent appraisers would be deemed admissible before the courts and the Court of Tax Appeals in any subsequent proceedings. The PVD would be allowed to require county appraisers and taxpayers to submit relevant documentation to the independent appraisers.

A final set of provisions would stipulate that beginning in tax year 2014, property that has been constructed or purchased with the proceeds of industrial revenue bonds (IRBs) and exempt from property tax but subsequently returned to the tax rolls would normally retain its classification as either real or personal property as designated by the Court of Tax Appeals at the time of the exemption. Reclassification would be possible only under circumstances involving a material physical change to the property, a material change in the use of the property, or a substantial change in directly applicable law. Parties seeking to change the classification of property at hearings before the Court of Tax Appeals would bear the burden of proof.

Background

The original bill dealt with the provisions seeking to clarify legislative intent from 2006 regarding the classification of certain property as real or personal. The House Taxation Committee on March 11 amended the bill to include the provisions regarding the authorization of taxpayers or county appraisers to request PVD-approved contract appraisals of certain complex properties and to add the language relating to the classification and tax treatment of property which had been exempt pursuant to the issuance of IRBs.

A fiscal note from the Department of Revenue on the original bill indicated that it would not have a fiscal impact because neither the definition of commercial and industrial machinery and equipment nor the procedure for appraising this type of property would be changed. A fiscal note on the bill, as amended by the House Taxation Committee, was not immediately available.