BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPEAL OF
FORT LEAVENWORTH FRONTIER HERITAGE
COMMUNITIES II, LLC, FROM AN ORDER OF
THE DIVISION OF TAXATION ON A DENIAL
OF SALES TAX EXEMPTION

Docket No. 2006-9137-DT

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Taxpayer, Fort Leavenworth Frontier Heritage Communities II, LLC ("Taxpayer"), appears by its attorneys of record, David Kenner of the firm Levy and Craig P.C. and Arthur Brown of the firm Levine, Staller, Sklar, Chan, Brown & Donnelly, P.A. The Kansas Department of Revenue (the "Department") appears by its attorney of record, Michael Burrichter.

Having exercised jurisdiction pursuant to K.S.A. 74-2438, this Board conducted a final hearing on August 27, 2007. After considering the facts and being fully advised in the premises, the Board finds and concludes as follows.

I.
Stipulated Facts

This matter was submitted on stipulated facts through a document filed on June 5, 2007 titled "Joint Stipulations." The Board hereby adopts the parties' stipulated facts, summarized below.

Taxpayer is a Kansas limited liability company with its business located in Leavenworth, Kansas. In 1996, pursuant to the Military Housing Privatization Initiative, the United States government privatized the housing units at certain military bases including the Fort Leavenworth United States Army base in Leavenworth, Kansas. In furtherance of the Privatization Fort Initiative, Fort Leavenworth Frontier Heritage Communities, LLC ("FHC") entered into a long-term ground lease with the United States government pursuant to which FHC leased certain parcels of land located at Leavenworth for a term of 50 years with a 25-year extension option.

Pursuant to the ground lease, the United State government also conveyed to FHC all of its right, title and interest in all buildings, improvements and fixtures located on the leased land. When it executed the ground lease, FHC also entered into a sublease with Taxpayer, pursuant to which FHC subleased to Taxpayer the land and all improvements covered by the ground lease.

The parties stipulate that Taxpayer is engaged in the commercial enterprise of owning, operating and renting residential housing units to individuals. Other than receiving *de minimis* income from other sources, Taxpayer derives all of its income from its rental units. The rents received by Taxpayer from leasing the units are not subject to the Kansas Retailers' Sales Tax.

The standard residential lease used by Taxpayer is a six-month lease; thereafter, the lease continues on a month-to-month basis. Either party may terminate the lease upon 30 days' notice. After the lease is executed, the tenant is entitled to the use and enjoyment of the unit, subject to the tenant's compliance with the terms of the lease and guidelines established for the residential community.

Taxpayer's administrative offices are located in Leavenworth, Kansas. Activities carried on at the administrative offices include without limitation the execution of residential leases; receipt of tenant rent payments; and receipt of goods, deliveries, and mail.

Taxpayer also provides other services to its tenants, including without limitation refuse and recycling, trash pick-up, snow and ice removal, landscaping, maintenance and repair, pest control, and utilities. No additional fees or assessments are charged to the tenants for such services.

Taxpayer is engaged in a construction/reconstruction/rehabilitation project relating to the residential units at the Fort Leavenworth site (the "Project"). The Project includes demolition, renovation and remodeling of certain existing residential units in addition to the construction of certain new units. The Project commenced in March 2006 and is scheduled to conclude in 2014.

The Project includes construction of 708 residential units (approximately 1,600 to 2,200 square foot homes in duplex and single-family configurations) and the renovation and remodeling of 588 residential units. Additionally, a 10,000 square foot administrative office building will be built in 2009 and 2010 from which Taxpayer will conduct its operations. The estimated cost of construction includes approximately $131 million in labor and services, $107 million in materials, and $13 million for machinery and equipment.

Taxpayer has contracted with an outside construction company to perform the Project. Taxpayer does not directly perform any construction or remodeling work but has hired, and currently employs, eleven full-time people as a direct result of the Project. These employees work primarily at the Taxpayer's administrative offices in Leavenworth.

On March 7, 2006, Taxpayer applied for a project exemption certificate exempting the Project from Kansas Retailers' Sales Tax. In its initial application for exemption, Taxpayer inadvertently stated that it was seeking exemption under subsection (d) of K.S.A. 74-50,115. The Department denied Taxpayer's exemption application.

During a May 18, 2006 informal conference with the Department, and in its amended application, Taxpayer stated that it was amending its application to request exemption as a nonmanufacturing business under subsection (b) of K.S.A. 74-50,115.

On September 12, 2006, the Designee of the Secretary of Revenue issued a final order upholding the Department's denial of Taxpayer's requested project exemption certificate. On October 12, 2006, a Notice of Appeal from the Department's final order was timely filed with this Board.

II.
Burden of Proof and Presumption of Validity

Taxpayer is the exemption applicant and therefore bears the burden of proof. *See In re Tax Appeal of Alex R. Masson, Inc.*, 21 Kan. App. 2d 863, 865, 909 P.2d 673, 675 (1995). "In Kansas, taxation is the rule and exemption is the exception." *Id.* Statutory exemption provisions are strictly construed against the party requesting exemption, and all doubts concerning exemption must be resolved against granting the exemption and in favor of taxation. *Id.*

The Department's final action is accorded a rebuttable presumption of validity. *See Country Club Home, Inc. v. Harder*, 228 Kan. 756, 763, 620 P.2d 1140, 1147 (1980) (holding that in spite of presumption, SRS regulations governing nursing home reimbursement were invalid because they were in contravention of enabling statute). The Board also acknowledges the doctrine of operative construction, recently enunciated by the Kansas Supreme Court as follows:

> The interpretation of a statute by an administrative agency charged with the responsibility of enforcing that statute is entitled to judicial deference. This deference is sometimes called the doctrine of operative construction.... [I]f there is a rational basis for the agency's interpretation, it should be upheld on judicial review....

Coma Corp. v. Kansas Dept. of Labor, 283 Kan. 625, 629, 154 P.3d 1080, 1083 (2007) (internal quotations and citations omitted).

III.
Sales Tax Exemption Under K.S.A. 79-3606(cc)

Kansas sales tax is levied on the retail sale of tangible personal property and on the furnishing of certain services. *See generally* K.S.A. 79-3603. There are, however, certain kinds of sales transactions that are exempt from sales tax. In this case Taxpayer is asserting an exemption under K.S.A. 79-3606(cc), which exempts the following:

> [A]ll sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115, and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business.

The provisions of K.S.A. 74-50,115, which are incorporated by reference into K.S.A. 79-3606(cc), are part of the Kansas Enterprise Zone Act (the "KEZA"). The KEZA is codified at K.S.A. 74-50,113 *et seq.* The KEZA provides incentives to Kansas businesses based on certain qualification criteria including business type, location and job creation. The KEZA incentives include both a sales tax exemption and job creation income tax credits. These incentives are designed to stimulate state enterprise in order to increase employment within the state. *See In re HCA Health Services*, 30 Kan. App. 2d 910, 914, 51 P.3d 119, 1123 (2002).

This case concerns a sales tax exemption application under the KEZA. The parties stipulate that the sole issue on appeal is whether Taxpayer is entitled to a project exemption certificate exempting the Project from Kansas Retailers' Sales Tax pursuant to K.S.A. 79-3606(cc).

In this case, Taxpayer would qualify for a sales tax exemption if sales of personal property and services in connection with Taxpayer's investments in the Project were "for the purpose and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto." K.S.A. 79-3606(cc).

The logical framework for determining whether Taxpayer qualifies for a project-based sales tax exemption under K.S.A. 79-3606(cc) is first to determine whether Taxpayer's enterprise is a qualifying enterprise, that is, either a "business or retail business," as those terms are defined under K.S.A. 74-50,115. If Taxpayer's enterprise is a qualifying enterprise, the question then becomes whether Taxpayer's investment in the Project is a qualifying investment. To answer this question we must determine whether Taxpayer's investment was made "for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling" the qualifying enterprise. *See* K.S.A. 79-3606(cc).

IV.
Qualifying Enterprise

Taxpayer's enterprise is a qualifying enterprise under K.S.A. 79-3606(cc) if it is a business or retail business. The term "business" can mean one of two things: a manufacturing business or a nonmanufacturing business. K.S.A. 74-50,114(b). Together these statutes provide that an enterprise is a qualifying enterprise if it is any of the following: a manufacturing business, a nonmanufacturing business, or a retail business.

The nonmanufacturing business classification is the default classification because it is defined as, among other things, a commercial enterprise other than a manufacturing business or retail business. *See* K.S.A. 74-50,114(g). We thus begin our analysis with the question whether Taxpayer is a manufacturing business or a retail business. If Taxpayer is neither, Taxpayer is by default a nonmanufacturing business.

The parties stipulate that Taxpayer is not a manufacturing business. The pivotal question thus becomes whether Taxpayer is a retail business. If Taxpayer is a retail business, the parties agree Taxpayer cannot qualify for exemption under K.S.A. 79-3606(cc) because in order to qualify for exemption as a retail business, Taxpayer not only must meet certain hiring criteria but also must be located within a town with 2,500 or fewer people or outside a city in a county having a population of 10,000 or less. *See* K.S.A. 74-50,115(c). Taxpayer's enterprise is located in Leavenworth, Kansas, a city which has a population of greater than 2,500.

The term retail business is defined under K.S.A. 74-50,114(i) as

> (1) [a]ny commercial enterprise primarily engaged in the sale at retail of goods or services taxable under the Kansas retailers' sales tax act; (2) any service provider set forth in K.S.A. 17-2707, and amendments thereto; (3) any bank, savings and loan or other lending institution; (4) any commercial enterprise whose primary business activity includes the sale of insurance; and (5) any commercial enterprise deriving its revenues directly from noncommercial customers in exchange for personal services such as, but not limited to, barber shops, beauty shops, photographic studios and funeral services.

The parties stipulate that Taxpayer does not meet the requirements of subsection (1) because Taxpayer derives all of its income from housing rentals and because its rental receipts are not subject to Kansas Retailers' Sales Tax. Also, neither party contends that subsections (2), (3) or (4) are applicable in this case. The focus of the parties' dispute is subsection (5).

Based on subsection (5), the Department contends that Taxpayer is a retail business because it is a commercial enterprise that derives its revenues directly from noncommercial customers (tenants) and in exchange for personal services (housing). Alternatively, the Department contends that Taxpayer qualifies as a retail business under subsection (5) because Taxpayer provides other services such as trash pickup and recycling, snow and ice removal, landscaping, maintenance and repair, pest control and utilities. According to the Department, these services fall within the definition of the term "personal services."

Taxpayer disagrees, arguing that its enterprise is not a retail business because, as stipulated by the parties, Taxpayer derives all of its income from owning, operating and renting residential housing units to individuals. According to Taxpayer, its primary business is not a "personal service" as that term is used in K.S.A. 74-50,114(i)(5). Taxpayer also argues that although it does provide some additional services, those services are incidental to Taxpayer's primary business and generate only *de minimis* income. According to Taxpayer, even if the incidental services it provides were deemed personal services, that fact alone would not make Taxpayer a retail business under K.S.A. 74-50,114(i)(5). For this proposition Taxpayer cites a final written determination by the Department (WFD-P-2002-1, Docket No. 01-638). In that case, the Department held that where less than 50 percent of a business's sales comprise non-taxable retail sales, the business is not a retail business under K.S.A. 74-50,114(i)(5).

In order to resolve the question whether Taxpayer is a retail business, we must first determine whether Taxpayer's primary business of owning, operating and renting residential housing units to individuals is a personal service as defined by K.S.A. 74-50,114(i)(5). The term "personal service" is not specifically defined; however, examples of personal services are listed in the statute. They include without limitation "barber shops, beauty shops, photographic studios and funeral services." *See* K.S.A. 74-50,114(i)(5).

The maxim *ejusdem generis* ("of the same kind") instructs that where a list refers to a general word or phrase, "such general word or phrase is held to refer to things of the same kind, or things that fall within the classification of the specific terms." *State v. Vogt*, 30 Kan. App. 2d 1138, 1141, 55 P.3d 365, 368 (2002). Based on the examples listed in K.S.A. 74-50,114(i)(5), we conclude that the definition of the term "personal services" should be construed narrowly to include services pertaining directly to an individual's person rather than the enterprise of owning, operating and renting residential housing units. We therefore find that Taxpayer's primary business is not a personal service under K.S.A. 74-50,114(i)(5).[1]

[1] Furthermore, in defining the terms "manufacturing business" and "nonmanufacturing business" under the KEZA, the Kansas Legislature referenced the Standard U.S. Department of Labor Industrial Classification (SIC) codes. *See* K.S.A. 74-50,114(e), (g). Although no reference to the SIC codes is specifically included in K.S.A. 74-50,114(i)(5), all of the examples of personal services contained in that statute are also included in SIC major group 72, titled "Personal Services." Services involving real estate are not included in SIC major group 72 but are found in another SIC major group.

We also find that the other services Taxpayer provides – trash pickup and recycling, snow and ice removal, landscaping, maintenance and repair, pest control and utilities – are merely incidental to Taxpayer's primary business. Even if those services were considered personal services, the Department's past interpretation of K.S.A. 74-50,114(i)(5) instructs that such incidental personal services do not rise to a level that would make Taxpayer's enterprise a retail business. *See* WFD-P-2002-1, Docket No. 01-638.

We conclude that Taxpayer's enterprise is neither a manufacturing business nor a retail business under K.S.A. 74-50,114. Thus, by default, Taxpayer's enterprise is a nonmanufacturing business. *See* K.S.A. 74-50,114(g). The parties stipulate that Taxpayer has provided documented evidence of job expansion involving the employment of at least five additional full-time employees as required under K.S.A. 74-50,115(1). Based on the foregoing, we conclude that Taxpayer is a qualifying enterprise for purposes of K.S.A. 79-3606(cc).

V.
Qualifying Investment

Having determined that Taxpayer's enterprise is a qualifying enterprise under K.S.A. 74-50,114(b), we turn now to the question whether Taxpayer's investments in the Project qualify for exemption under K.S.A. 79-3606(cc). In pertinent part, the statute allows an exemption for the following:

> [A]ll sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business.... K.S.A. 79-3606(cc).

Taxpayer directs this Board's attention to two key facts contained in the parties' Joint Stipulations. First, Taxpayer is engaged in the Project, which involves construction, reconstruction and rehabilitation of residential housing units. Second, Taxpayer's enterprise is the ownership, operation and rental of these residential housing units (which we have found to be a "business" under K.S.A. 74-50,114(b)). Thus, based on these stipulations, Taxpayer argues that its investments in the Project are *ipso facto* "for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business" and are therefore exempt from sales tax under K.S.A. 79-3606(cc).

The Department disagrees, asserting that K.S.A. 79-3606(cc) does not, by itself, define what kinds of investments qualify for exemption. The Department maintains that when interpreting the KEZA sales tax provisions, a court must look outside that statute and consider the KEZA income tax credit provisions for definitional guidance. The Department cites *In re HCA Health Servs.*, 30 Kan. App. 2d 910, 914, 51 P.3d 1119, 1123 (2002) for this proposition. There the Kansas Court of Appeals said:

> Both the income tax exemption under K.S.A. 79-32,160a and the sales tax exemption of K.S.A. 74-50,115 are designed to stimulate state enterprise in order to increase employment within the state. Both statutes are encompassed by the Kansas Enterprise Zone Act ["KEZA"]. Therefore, as the legislature expressed no contrary intent, it is the duty of this court to construe the statutes with the Act as consistently as possible. Thus, the Department appropriately used K.S.A. 79-32,154(d)(1) to determine whether the Taxpayer had added five employees as required by K.S.A. 74-50-115(b).

Id. (citation omitted).

Based on its reading of *HCA Health*, the Department contends that under K.S.A. 79-3606(cc), a taxpayer's investment in a business must also be an investment in a "qualified business facility" as that term is defined by K.S.A. 79-32,160a (a KEZA income tax provision). Within the KEZA income tax provisions, the term "facility" is defined generally to include buildings where individuals are employed or machinery and equipment are housed. *See* K.S.A. 79-32,154(a). And the term "qualified business facility" is defined as a facility that satisfies certain requirements of K.S.A. 79-32,154(b).[2]

Notably, neither the term "facility" nor the term "qualified business facility" appears in the KEZA sales tax exemption provisions. *See* K.S.A. 79-3606(cc). The KEZA sales tax exemption provisions are the provisions under which Taxpayer seeks an exemption in this case.

Based on its reading of K.S.A. 79-3606(cc) in conjunction with the KEZA income tax provisions, the Department maintains that Taxpayer cannot qualify for a sales tax exemption for sales relating to any portion of the Project other than Taxpayer's administrative office buildings. According to the Department, Taxpayer's administrative office buildings are the only structures within the Project that are a "qualified business facility" as that term is defined in the income tax provisions of KEZA.

It is important to note here that the Department's arguments hinge on a single threshold legal question: Is it appropriate for this Board to consider definitions and limitations contained in the KEZA income tax provisions when determining what kinds of investments qualify for a KEZA sales tax exemption under K.S.A. 79-3606(cc)?

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[2] The Department notes that K.S.A. 79-32,154(b)(1) provides that a facility is not a "qualified business facility" if the applicant's only activity is to lease it to others, as the Taxpayer does in this case. The Department also notes that under K.S.A. 79-32,154(b)(1), a "qualified business facility" must be a "revenue producing enterprise" as specifically defined by K.S.A. 79-32,154(c) and that Taxpayer's enterprise does not fit within that narrow definition.

As a general rule, statutes concerning the same subject matter should be interpreted in *pari materia* (in reference to each other). *See McVay v.* Rich, 18 Kan. App. 2d 746, 751-52, 859 P.2d 399, 403-04 (1993), *aff'd* at 255 Kan. 371, 874 P.2d 641 (1994); *see also In re HCA Health Servs.*, 30 Kan. App. 2d 910, 51 P.3d 1119 (2002) (applying rule to KEZA statutes). This rule of statutory interpretation is not without exception, however. One exception is that where the specific statute in question provides for complete resolution of the subject matter at issue, there is no cause to look to other statutes for guidance. *See City of Olathe v. Scott*, 253 Kan. 687, 693, 861 P.2d 1287, 1292 (1993). Furthermore, analysis should be confined to the specific statute in question absent legislative intent making other statutes controlling. *See State v. Reed*, 254 Kan. 52, 54, 865 P.2d 191, 194 (1993).

Here we find the sales tax exemption requirements in K.S.A. 79-3606(cc) to be controlling. It is not appropriate to look outside that statute for definitional guidance without specific statutory authority to do so. We find no such authority. In fact, we find the opposite.

It is widely held that when the Legislature revises an existing law, it is presumed that the Legislature intended to change the law. *See In re Lee Apparel Co.*, 30 Kan. App. 2d 240, 245, 40 P.3d 974 (2002); *see also State v. Dubish*, 234 Kan. 708, 713, 675 P.2d 877 (1983). In 1994, the Kansas Legislature amended K.S.A. 79-3606(cc), eliminating the connection between the KEZA sales tax exemption provisions and the KEZA income tax provisions for purposes of determining the kinds of investment required for a sales tax exemption. Specifically, the 1994 amendment struck language requiring that an applicant make an investment in a "qualified business facility located within an enterprise zone which will qualify for an income tax credit under K.S.A. 79-32,153." *See* 1994 Kan. Sess. Laws, Ch. 2 (H.B. 2004). In place of that language, the Legislature inserted the current requirement that a taxpayer invest in "constructing, reconstructing, enlarging or remodeling a business or retail business" which meets the requirements established in K.S.A. 74-50,115. *See id.* In view of the 1994 Amendment, we decline to overlay the KEZA income tax credit requirements upon the KEZA sales tax exemption requirements of K.S.A. 79-3606(cc).

Although we have found it appropriate to confine our analysis to the language of K.S.A. 79-3606(cc) rather than look outside that statute for definitional guidance, our analysis does not end there. The Department maintains that the plain meaning of the term "business" in K.S.A. 79-3606(cc) still cannot logically be extended to include investments in the Project's leased housing units. The Department reasons that the housing units are business assets, tantamount to inventory, and are not a "business" as contemplated by K.S.A. 79-3606(cc).

In effect, the Department argues that even though the 1994 amendment eliminated the "qualified business facility" language, the Kansas Legislature nonetheless intended to stop short of exempting sales in connection with investments in structures where no employees work and no business transactions occur. The Department, in essence, urges

this Board to conclude that for purposes of K.S.A. 79-3606(cc), the term "business" should be construed narrowly to mean assets that comprise a "place of business" or "business facility" rather than other component assets of a business.

Taxpayer disagrees, arguing that the 1994 amendment to K.S.A. 79-3606(cc) expanded the scope of the KEZA sales tax exemption beyond just investments in facilities, or structures where employees work and business transactions occur. After the 1994 amendment, Taxpayer argues, the exemption now broadly covers investments in other structures that are part of a business, including leased residential structures owned and operated by a business.

We acknowledge that reasonable deference must be given to the Department's interpretation of the sales tax exemption provisions of KEZA because the Department is the agency responsible for enforcing those provisions. However, ultimately, it is this Board's responsibility to decide whether the Department's interpretation is based on a permissible construction of the statute. Questions of statutory interpretation are matters of law. *State ex rel. Stephan v. Bd. of Seward County Comm'rs*, 254 Kan. 446, 448, 866 P.2d 1024, 1026 (1994).

Were it not for the 1994 amendment specifically removing the requirement that investments be made in a "qualifyed business facility" – or in any other kind of facility for that matter – the Department's narrow interpretation of K.S.A. 79-3606(cc) would be more plausible. In view of the 1994 amendment, however, we conclude that the Kansas Legislature clearly expressed its intent to expand the scope of the statute to embrace more than just investments in assets comprising a facility or other structure where employees work and business is transacted. We conclude that the exemption statute, as amended, extends to include investments in other kinds of assets that are part of a business that is being constructed, reconstructing, enlarged or remodeling.

We therefore find that sales connected with Taxpayer's investments in the Project were made "for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business." The fact that the business assets being constructed, reconstructed, enlarged or remodeled at Fort Leavenworth are not part of a facility or a building where employees work and business is transacted does not preclude exemption under K.S.A. 79-3606(cc). We find no rational basis for the Department's narrow interpretation of the exemption in view of the 1994 amendment.

VI.
Application of K.S.A. 74-50,115(d)

As a final matter, we must address a contention by the Department that does not involve the nature of Taxpayer's enterprise or investment in the Project but, rather, concerns ownership and occupancy of the structures within the Project. The Department argues, because the structures within the Project are leased, in order to qualify for a KEZA sales tax exemption the structures must be leased to a business, not to residential

tenants. For this proposition the Department cites K.S.A. 74-50,115(d). That statute provides in pertinent part as follows:

> Any person constructing, reconstructing, remodeling or enlarging a facility which will be leased in whole or in part for a period of five years or more, or commencing on the effective date of this act and ending on April 1, 2007, any person constructing, reconstructing, remodeling or enlarging a facility located within Saline county which title of such facility will be conveyed, to a business that would be eligible for a sales tax exemption hereunder if such business had constructed, reconstructed, enlarged or remodeled such facility or portion thereof itself shall be entitled to the sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-3606, and amendments thereto.

We find K.S.A. 74-50,115(d) to be inapplicable under the stipulated facts. The statute applies narrowly to persons investing in a facility that will be leased to a business. Taxpayer is not leasing a facility to a business. Rather, Taxpayer is operating its own business on the Project premises, and that business involves owning, operating and renting residential housing units to individuals.

VII.
Conclusion

For the reasons set forth above, we conclude that the Department's application of K.S.A. 79-3606(cc) in this case was in error because it was based on an impermissible construction of that statute. We conclude that Taxpayer has carried its burden of proving that it is entitled to an exemption from sales tax for the Project under K.S.A. 79-3606(cc) as amended in 1994. We therefore reverse the Department's denial of Taxpayer's application for sales tax exemption and order the Department to issue a project exemption certificate for the Project.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, 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: Secretary, Board of Tax Appeals, Docking State Office Building, Suite 451, 915 Southwest Harrison Street, Topeka, Kansas 66612-1505. *A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable.* The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 p.m. on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS

BOARD OF TAX APPEALS
ATTEST
STATE OF KANSAS

REBECCA W. CROTTY, CHAIRPERSON

J. FRED KUBIK, MEMBER

RECUSED

BRUCE F. LARKIN, MEMBER

JOLLENE R. ALLEN, SECRETARY

TREVOR C. WOLFORD, ATTORNEY

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 the order in Docket No. 2006-9137-DT, and any attachments thereto, were placed in the United States Mail, on this 28th day of April, 2008, addressed to:

Ft Leavenworth Frontier Heritage Comm
1 East Stow Rd
Marlton, NJ 08053

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and a copy was placed in capitol complex building mail, addressed to:

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Topeka, KS 66612

Michael D. Burrichter, Attorney
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

Joelene R. Allen

Joelene R. Allen, Secretary