

## MEMORANDUM

FROM: Court of Tax Appeals (Board of Tax Appeals as of July 1, 2014)  
DATE: June 25, 2014  
RE: Practice and Procedure Effective July 1, 2014

**Introduction:** Effective July 1, 2014, the Court of Tax Appeals will become the Board of Tax Appeals (BOTA) pursuant to SB 231. In addition, the Kansas Legislature made several other amendments to statutes governing BOTA. The Legislature expressed concerns about case delays – regardless of whether those delays were caused by continuance requests of parties or otherwise – and it has implemented changes that expedite the tax appeal process and permit BOTA to render decisions more quickly and efficiently.

Our mission continues to be to resolve disputes between taxpayers and taxing authorities promptly and impartially.

Effective July 1, 2014, BOTA will implement a new scheduling procedure as outlined hereafter. Although different from the prior scheduling process (used over the last few years), the overall goal of this new scheduling procedure is to encourage the parties to exchange information in good faith and in a prompt fashion that leads to timely resolution of the appeal either by dismissal, stipulation, or Board order. It is imperative that the parties take the initiative to prosecute and defend appeals in an expeditious manner. The parties will be expected to prepare for hearing accordingly.

### **Regular Division Scheduling Effective From and After July 1, 2014:**

1. The Board will no longer issue the standard discovery and exchange schedule previously used for scheduling the discovery process and setting prehearing conferences.
2. After an appeal is properly filed in the regular division, the Board will send a *Notice of Hearing* to the parties.
3. If a party wishes to conduct discovery, the party shall commence discovery immediately upon the filing of an appeal. (In the Hearing Calendar section of the Board's website, there is a newly docketed cases spreadsheet available showing all newly docketed cases including docket number, county, applicant name, property identification number and other data.) The parties should not wait for a notice of hearing to start discovery.
4. The Board anticipates that there will be at least 90 to 120 days between the filing date of an appeal and its hearing date. This provides time and opportunity to conduct discovery. Discovery shall be completed by the parties at least 30 days prior to the hearing date. It is the responsibility of the parties to conduct discovery in a manner that accommodates the hearing schedule.

5. If a party chooses to conduct discovery, certificates of service for discovery transactions should be filed with the Board. Full discovery responses, such as interrogatory responses, documents, or other items produced pursuant to discovery requests, should not be filed with the Board.
6. K.A.R. 94-5-21 and the Board's Directive 2014-03, which will be issued July 1, 2014, address exchange of witness lists and exhibits in advance of hearing.

The summary scheduling of equalization appeals and payment under protest appeals will provide adequate time for discovery if the parties wish to conduct discovery and adequate time for the parties to confer in good faith in an attempt to resolve and settle the appeals. *It will be the responsibility of the parties to ensure that discovery is completed in a timely manner to accommodate the hearing schedule.* There will no longer be a need for the Board to schedule telephone status or prehearing conferences in most appeals. As previously stated, the Board anticipates that there will be at least 90 to 120 days between the filing date of an appeal and its hearing date. It is anticipated that the time frame will vary at certain times of the year due to the number of appeals filed and the number of business days available for hearings.

In addition, to accommodate the multitude of filings, the Board will be scheduling the hearings in groups of a morning docket call (9:00 a.m. to 12:00p.m.) and an afternoon docket call (1:30 p.m. to 5:00 p.m.) with approximately one-hour allocated to each case. To assist further in moving the case load forward, the Board will expect all inquiries/requests to be in writing. The Board staff will respond once the Board has received the request in writing. (K.A.R. 94-5-15 and K.A.R. 94-5-20)

Our prior standard discovery and exchange schedule used for scheduling the discovery process and setting prehearing conferences was designed in part to set a deadline for property owners to decide whether or not they would be obtaining a fee appraisal for their appeals and to obtain such an appraisal. The purpose of the exchange date was merely for the efficient administration of appeals. Going forward from and after July 1, 2014, parties must be cognizant that they will need to make decisions regarding fee appraisals almost immediately upon filing the appeal. Parties must promptly determine whether to procure an appraisal, and, if desired, promptly engage an appraiser and obtain the appraisal in time for exchange of witness lists and exhibits. To be considered by the Board, any motions for continuance and/or modified scheduling orders must be filed in strict compliance with K.A.R. 94-5-20 and the Board's Directive 2014-02, which will be issued on July 1, 2014. Such motions will be evaluated in strict accordance with K.A.R. 94-5-20 and the Board's Directive 2014-02.

Please keep in mind that if the parties agree that discovery is not needed for a particular appeal and the parties wish to have an earlier hearing date than the date scheduled by the Board, the parties may file a joint request for an earlier hearing date stating that they are ready for hearing and providing at least two or three mutually agreeable dates, and the Board will do its best to accommodate the request within its hearing calendar.

It is also important to remember that the Board does not control the number of appeals filed each year. Property owners file appeals. Nor does the Board control the number of cases heard. The parties control which cases are actually heard. Appellants may dismiss appeals, and property owners and counties may submit stipulations for settlement. Lawyers representing taxpayers and counties will need to be fully mindful of the number of tax appeals they are handling as they will be expected to complete all applicable procedures in a timely fashion and to be prepared for all their hearings as scheduled by the

Board. The Kansas Rules of Professional Conduct (KRPC), adopted by Kansas Supreme Court Rule 226, establish that a lawyer should not accept representation in a matter unless it can be performed competently, promptly, diligently, and with reasonable preparation. *See* KRPC Rule 1.1, 1.3, and 1.16(a)(1). Delay should not be indulged merely for the convenience of the lawyer. *See* KRPC Rule 3.2. Unless exceptional and unforeseeable circumstances apply, counsel asserting that they are too busy or have conflicts, or that their witnesses are unavailable, will not constitute sufficient justification to continue hearings.

Your on-going commitment to timely adjudication and efficient use of administrative resources is appreciated.