AGREED ORDER OF STIPULATION AND DISMISSAL

APPEARANCES:

For the County: Michael A. Montoya, Michael A. Montoya, P.A., P.O. Box 1220, Salina, KS 67402-1220, (785) 827-5505.

For the Taxpayer: Jarrod C. Kieffer, Stinson LLP, 1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206-6620, (316) 268-7946

ENTERED:

The above-captioned matter comes on for consideration and decision by the Board of Tax Appeals for the State of Kansas (the "Board") pursuant to a stipulation of value entered into by the parties as set forth herein. Upon consideration of said stipulation, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties hereto.

2. After full consideration of the pertinent facts and governing law, including without limitation the county appraiser's duties under K.S.A. § 79-1426, the parties enter into a stipulation of value as set forth herein:

3. The Board adopts the stipulation of the parties as set forth herein and orders termination of the above-captioned matter.

4. In accordance with the parties' agreement, the County hereby agrees that the values for the tax year 2018 shall be:
The parties further agree to the following values for 2019 and 2020:

<table>
<thead>
<tr>
<th>Parcel ID #</th>
<th>Classification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>040-035-15-0-30-01-001-00-0</td>
<td>Bldg. 6-10 Exempt/Commercial</td>
<td>$3,890,040</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commercial/Land</td>
<td>410,000</td>
</tr>
<tr>
<td></td>
<td>Commercial/Paving etc</td>
<td>660,000</td>
</tr>
<tr>
<td></td>
<td>Commercial</td>
<td>2,061,200</td>
</tr>
<tr>
<td></td>
<td>Bldg. 1-5</td>
<td></td>
</tr>
</tbody>
</table>

The parties further agree to the following values for 2021:

<table>
<thead>
<tr>
<th>Parcel ID #</th>
<th>Classification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>040-035-15-0-30-01-001-00-0</td>
<td>Bldg. 6-12 Exempt/Commercial</td>
<td>$3,868,800</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commercial/Land</td>
<td>410,000</td>
</tr>
<tr>
<td></td>
<td>Commercial/Paving etc</td>
<td>660,000</td>
</tr>
<tr>
<td></td>
<td>Commercial</td>
<td>2,061,200</td>
</tr>
<tr>
<td></td>
<td>Bldg. 1-5</td>
<td></td>
</tr>
</tbody>
</table>

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that the values for the tax year 2019 shall be the stipulated values as set forth herein. IT IS ORDERED FURTHER that the above-captioned matters shall be dismissed.

The taxpayer requests that the following above matter be dismissed from this action before the BOARD OF TAX APPEALS:

County officials are directed to correct their records accordingly, to re-compute the tax liability of the Taxpayer and refund any overpayment of taxes as required by law or by the terms of the stipulation adopted herein.

IT IS SO ORDERED.
County Approval:
Dated: 3/10/2020

/s/ Michael A. Montoya
MICHAEL A. MONTOYA, S.C. #13580
Attorney for Harvey County

Taxpayer Approval:
Dated: 3/10/2020

/s/ Jarrod C Kieffer
Jarrod C. Kieffer
Attorney for Taxpayer
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 No. 2019-743-PR and any attachments thereto, was placed in the United States Mail, on this 18th day of March, 2020, addressed to:

William Unruh, CFO
City of Hesston
c/o Excel Industries Inc
200 S Ridge Rd
Hesston, KS 67062-8808

Jarrod C Kieffer, Attorney
Stinson LLP
1625 N Waterfront Pkwy Ste 300
Wichita, KS 67206-6620

Michele Lowery, County Appraiser
Harvey County Courthouse
PO Box 687
Newton, KS 67114-0687

Michael Montoya, Attorney
Harvey County
PO Box 1220
Salina, KS 67402-1220

Emily Nichols, County Treasurer
Harvey County Courthouse
PO Box 687
Newton, KS 67114-0687

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

Joelene R. Allen, Secretary
BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPEALS OF
MBS BARLEY 1031, LLC

Dockets 2018-6185-EQ, 2019-4533-EQ,
2018-6187-EQ, 2019-4532-EQ,
2018-6188-EQ, 2019-4535-EQ,
2018-6186-EQ, 2019-4534-EQ,

ORDER ON STIPULATION

The Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties pursuant to K.S.A. 79-1609.

2. The parties advise the Board that after a review of all of the documentation exchanged and to resolve these matters without further litigation, they have reached agreement as to the ad valorem valuations of the Subjects as follows:

<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>Docket</th>
<th>Assessed Value</th>
<th>Market Value</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>046-073-08-02-05-013.00-0</td>
<td>2019-4533-EQ</td>
<td>$569,000</td>
<td>$547,100</td>
<td>Commercial 2019</td>
</tr>
<tr>
<td>046-073-08-02-05-016.00-0</td>
<td>2019-4532-EQ</td>
<td>$733,000</td>
<td>$703,700</td>
<td>Commercial 2019</td>
</tr>
<tr>
<td>046-073-08-02-05-018.00-0</td>
<td>2019-4535-EQ</td>
<td>$683,000</td>
<td>$656,300</td>
<td>Commercial 2019</td>
</tr>
<tr>
<td>046-073-08-02-05-015.00-0</td>
<td>2019-4534-EQ</td>
<td>$525,000</td>
<td>$504,300</td>
<td>Commercial 2019</td>
</tr>
</tbody>
</table>

3. This is a negotiated agreement between the parties; therefore, the reduction in value is a waiver to K.S.A. 79-1460.


IT IS ORDERED that the value for the Subjects shall be as stated in paragraph 2. The County shall correct its records, recalculate the tax liability and refund to the Taxpayer any over payment of taxes as required by law or by the terms of this stipulation.


THE BOARD OF TAX APPEALS

Devin Sprecker, Member
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. 2018-6185-EQ et al. and any attachments thereto, was placed in the United States Mail, on this ___ day of __________, 20___ addressed to:

Patrick T Hayes, Managing Member/President
MBS Barkley 1031 LLC
4240 Blue Ridge Blvd Apt 900
Kansas City, MO 64133

Jerry W Chatam, Tax Representative
JW Chatam and Associates Inc
14360 W 96th Terr
Lenexa, KS 66215

David Beau Boisvert, County Appraiser
Johnson County Appraiser's Office
11811 S Sunset Dr Ste 2100
Olathe, KS 66061-7060

Ryan Carpenter, Asst County Counselor
Johnson County Admin Bldg
111 S Cherry, Ste 3200
Olathe, KS 66061

Thomas G Franzen, County Treasurer
Johnson County Admin Bldg
111 S Cherry St Ste 1500
Olathe, KS 66061-3451

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

Joelene R. Allen, Secretary
BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEAL OF CH RETAIL FUND I/KANSAS
CITY CORBIN PARK SOUTH, L.L.C. FOR
THE YEAR 2019 IN JOHNSON COUNTY,
KANSAS

Docket No. 2019-5078-EQ

ORDER

Upon the written request of the appellant received on March 13, 2020, the
Board finds that the above captioned matter is dismissed.

The subject matter of this appeal is as follows:

Parcel ID No. 046-079-32-0-20-06-001.00-0.

IT IS THEREFORE ORDERED that the appeal is dismissed.

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.

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, CHAIR

JAMES D. COOPER, BOARD MEMBER

DEVIN SPRECKER, BOARD MEMBER

JOELLENE R. ALLEN, SECRETARY
CERTIFICATE OF SERVICE

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 No. 2019-5078-EQ, and any attachments there to, was served by depositing the same in the United States mail, postage pre-paid, on the 18th day of March, 2020, addressed to the following:

CH Retail Fund I/Kansas City Corbin Park South LLC
c/o Savage and Browning LLC
8676 W 96th St Ste 100
Overland Park, KS 66212

Kevin J Breer, Attorney
Breer Law Firm, LLC
4800 Rainbow Blvd, Ste 200
Westwood, KS 66205-1932

David Beau Boisvert, County Appraiser
Johnson County Appraiser's Office
11811 S Sunset Dr Ste 2100
Olathe KS 66061-7060

Ryan Carpenter, Asst County Counselor
Johnson County Admin Bldg
111 S Cherry, Ste 3200
Olathe KS 66061

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

Joelene R. Allen, Secretary
BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEALS OF CH RETAIL FUND I/KANSAS
CITY PRAIRIE TRAILS, L.L.C. FOR THE
YEAR 2019 IN JOHNSON COUNTY,
KANSAS


ORDER

Upon the written request of the appellant received on March 13, 2020, the Board finds that the above captioned matters are dismissed.

The subject matter of these appeals is as follows:

Parcel ID No. 046-153-05-0-40-15-006.00-0,
046-153-05-0-40-15-001.00-0.

IT IS THEREFORE ORDERED that the appeals are dismissed.

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.

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, CHAIR

JAMES D. COOPER, BOARD MEMBER

DEVIN SPRECKER, BOARD MEMBER

JOELENE R. ALLEN, SECRETARY
CERTIFICATE OF SERVICE

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. 2019-4823-EQ and 2019-4824-EQ, and any attachments there to, was served by depositing the same in the United States mail, postage pre-paid, on the 18th day of March, 2020, addressed to the following:

CH Retail Fund I/Kansas City Prairie Trails LLC
c/o Savage and Browning LLC
8676 W 96th St Ste 100
Overland Park, KS 66212

Kevin J Breer, Attorney
Breer Law Firm, LLC
4800 Rainbow Blvd, Ste 200
Westwood, KS 66205-1932

David Beau Boisvert, County Appraiser
Johnson County Appraiser's Office
11811 S Sunset Dr Ste 2100
Olathe KS 66061-7060

Ryan Carpenter, Asst County Counselor
Johnson County Admin Bldg
111 S Cherry, Ste 3200
Olathe KS 66061

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

Joelene R. Allen, Secretary
BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF
MORITZ, ROBERT W. & DANIELLE C.
FOR EXEMPTION FROM AD VALOREM
TAXATION IN JOHNSON COUNTY, KANSAS

Docket No. 2018-1728-TX

Parcel ID Number: 046-052-09-0-40-01-025.00-0

SUMMARY DECISION

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 March 11, 2020. The Applicant, Robert W. and Danielle C. Moritz, appeared by Robert W. Moritz and Andrew Smith, Pastor and Taxpayer Representative (see Declaration of Representative attached hereto as “Attachment A”). Johnson County appeared by Ryan Carpenter, Assistant County Counselor, and Shana Casner, Johnson County Tax Specialist. The Applicant requests a tax exemption for the subject property beginning in tax year 2018.

Parties’ Arguments

The Applicant testified the subject property is being used to conduct church services and a theater ministry and as a parsonage. A lease was signed between Mr. and Mrs. Moritz and The Remnant in Kansas City, Inc. for the period of January 1, 2018, to December 31, 2018. The Applicant stated that the lease terminated when a warranty deed was executed on August 31, 2018, conveying the subject property from Robert W. Moritz and Danielle C. Moritz to The Remnant in Kansas City, Inc. The deed has never been filed with the Register of Deeds as the Applicant has yet to provide the consideration required by Mr. and Mrs. Moritz, i.e. taking over their mortgage and providing additional compensation. In October of 2018, Mr. Smith began occupying the residential portion of the property; it was vacant prior to his occupancy.

The County recommended the request for exemption be denied. The County stated that, because the deed has not been recorded, Mr. and Mrs. Moritz remain the owners of record of the subject property. As the subject property has been leased to the church and serves as an investment to Mr. and Mrs. Moritz, the requirements of the exemption statute have not been met.
Applicable Statutes

K.S.A. 2018 Supp. 79-201 Second. The statute provides an exemption from ad valorem taxes for:

allis real property, and all tangible personal property, actually and regularly used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes, including property used exclusively for such purposes by more than one agency or organization for one or more of such exempt purposes. . . . [T]his exemption shall not apply to such property, not actually used or occupied for the purposes set forth herein, nor to such property held or used as an investment even though the income or rentals received therefrom is used wholly for such literary, educational, scientific, religious, benevolent or charitable purposes. . . .

K.S.A. 2018 Supp. 79-201 Seventh. The statute provides an exemption from ad valorem taxes for:

allis parsonages owned by a church society and actually and regularly occupied and used predominantly as a residence by a minister or other clergyman of such church society who is actually and regularly engaged in conducting the services and religious ministrations of such society, and the land upon which such parsonage is located to the extent necessary for the accommodation of such parsonage.

Findings and Conclusions

In Kansas, taxation is the rule and exemption is the exception. See Board of County Comm'rs v. Kansas Ave. Properties, 246 Kan. 161, 166, 786 P.2d 1141 (1990) (citations omitted). Tax exemption statutes are strictly construed, and all doubts are resolved against exemption and in favor of taxation. Id. The applicant bears the burden of proving entitlement to exemption. Id.

The Board finds that the applicant has not presented evidence sufficient to satisfy the statutory requirements of K.S.A. 2018 Supp. 79-201 Second or K.S.A. 2018 Supp. 79-201 Seventh. In regard to the requirements of K.S.A. 2018 Supp. 79-201 Second, the Board finds that the subject property, though used for religious purposes, is being held or used as an investment by Mr. and Mrs. Moritz. The property was been leased for much of 2018. Currently, though Mr. and Mrs. Moritz have signed a deed conveying the property to the church, they will not effectuate the
transfer of the property to the church as the owner of record until they receive the required consideration. Because the use of the property serves both the uses of religious worship and of investment for its owners, it is not being "actually and regularly used exclusively for...religious purposes" (emphasis added).

The property likewise does not qualify for exemption pursuant to K.S.A. 2018 Supp. 79-201 Seventh. In addition to the requirement that the property house a minister or clergy member, the statute requires the property to be "owned by a church society". In this case, the church has yet to become the record owner of the property.

While the Board sympathizes with the difficulties churches can face in obtaining financing and shouldering a tax burden, the Board does not have the power to hear and decide equitable claims. *Sage v. Williams*, 23 K.A.2d 624, 628, 933 P.2d 775 (1997) (review denied).

Based on all of the evidence presented at the hearing, the Board concludes that the request for exemption from ad valorem taxation is denied.

IT IS THEREFORE ORDERED that the application for exemption from ad valorem taxation is denied.

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 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 (3) days for mailing pursuant to statute). The Parties should note that, pursuant to K.S.A. 2016 Supp. 74-2426(c)(4)(A), in regard to any petition for review of the Board's order filed in the Kansas Court of Appeals, for purposes of such an appeal, the Board's order shall become final only after the issuance of a full and complete opinion.

Rather than filing a petition for reconsideration, any aggrieved party may request, within 14 days of receiving this order, a full and complete opinion be issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto (allowing an additional three (3) days for mailing pursuant to statute).

Rather than filing a petition for reconsideration or a request for a full and complete opinion, any Taxpayer has the right to appeal this order of the Board by filing a petition with the district court pursuant to K.S.A. 74-2426(c)(4)(B), and
amendments thereto. Said petition for judicial review must be filed within 30 days from the date of certification of this order. See K.S.A. 77-613(b) and (c), and amendments thereto 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 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, CHAIR

JAMES D. COOPER, BOARD MEMBER

DEVIN SPRECKER, BOARD MEMBER

JOELENNE R. ALLEN, SECRETARY
CERTIFICATE OF SERVICE

I, Joelene 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. 2018-1728-TX, and any attachments thereto, was placed in the U.S. mail, on this 18th day of March, 2020, addressed to:

Robert W Moritz
Danielle C Moritz
5502 Oakview St
Shawnee, KS 66216

Andrew Smith
13622 W 62nd St
Shawnee, KS 66216

Andrew Zarda, Attorney
Duggan Shadwick Doerr Kurlbaum LLC
9101 W 110th St Ste 200
Overland Park, KS 66210

David Beau Boisvert, County Appraiser
Johnson County Appraiser's Office
11811 S Sunset Dr Ste 2100
Olathe, KS 66061-7060

Ryan Carpenter, Asst County Counselor
Johnson County Admin Bldg
111 S Cherry, Ste 3200
Olathe, KS 66061

Thomas G Franzen, County Treasurer
Johnson County Admin Bldg
111 S Cherry St Ste 1500
Olathe, KS 66061-3451

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

Joelene R. Allen, Secretary
ATTACHMENT A
DECLARATION OF REPRESENTATIVE
Kansas Division of Property Valuation

Robert W. & Danielle C. Moritz
Property Owner(s) as stated on the Valuation Notice
Shawnee, KS 66216
City, State, and Zip Code

5502 Oakview Street
Property Owner's Mailing Address
Shawnee, KS 66216
City, State, and Zip Code

Robert W. & Danielle C. Moritz
Print or Type your Name

1. The above property owner(s) hereby appoints Andrew Smith
to represent the property owner in appeal matters before the Division of Property Valuation, county appraiser designee, and the Small Claims and Expedited Hearing Division or State Board of Tax Appeals pursuant to the Board's rules and regulations for the following parcel(s) or personal property accounts located in Johnson County. This declaration is for the 2019-2020 tax year only and revokes all prior Declaration of Representative forms for the same tax year. This form, completed and signed, must be a part of the hearing record before the hearing will take place.

Andrew Smith, pastor
Individual Representative's Name and Title
13622 W 62nd Street, Shawnee, KS
Representative's Mailing Address

913-504-4420 dew@churches.org
Representative's Telephone Number and Email Address

Check the Appropriate Designation Below

☐ Attorney
☐ Certified Public Accountant
☐ Certified General Appraiser
☐ Tax Representative or Agent
☐ Member of the Taxpayer's Immediate Family
☐ Authorized Employee of the Taxpayer
☐ Other (explain)

Send notices and all other written communication in proceedings involving the property to (check one box below)

☐ The appointed representative
☐ The property owner

List all real estate parcel identification numbers and personal property account numbers under appeal. Attach additional pages as needed.

13622 W 62nd St, Shawnee, KS 66216

Form No. PV-AP-9 7/2014
BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEAL OF STEWART, CLARK D. & SUE A.
FOR THE YEAR 2019 IN JOHNSON COUNTY,
KANSAS

Docket No. 2019-6281-EQ

Parcel ID Number: 046-152-09-0-30-06-020.00-0

SUMMARY DECISION

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 March 11, 2020. The Taxpayer, Clark D. and Sue A. Stewart, appeared by John M. Edgar, Attorney, and Brenden M. McNeal, Attorney. Johnson County appeared by Ryan Carpenter, Assistant County Counselor, and Eric Serrano, Johnson County BOTA Specialist. The tax year in issue is 2019.

The Taxpayer asserted the subject property should be classified as agricultural or, in the alternative, valued at $0. The Taxpayer explained the 7-acre subject property sits in the spillway of a small lake. The spillway leaks and a significant portion of the property is in the flood plain, so the ground is often wet. The Taxpayer has leveled the property and seeded it for several years with prairie grasses. In 2020, the Taxpayer arranged for a haying operation to come in and bale the grass. The Taxpayer also noted the subject property is landlocked and cannot be accessed without permission from an adjoining landowner.

The County noted the subject property is currently valued at $25,000, the value determined at the Small Claims Division. However, the County recommended the value of the subject be restored to its original 2019 value of $132,060. As support for its recommended valuation, the County provided a spreadsheet of residential land sales. The County's recommended value considers the contributory value of the subject to the adjacent improved parcel owned by the Taxpayer and applies a 76% good influence factor to effectuate this estimate. The County further applied a 72% good influence factor to account for the location of a portion of the property in the flood plain.
K.S.A. 79-1476 provides, in part:

In addition thereto valuations shall be established for each parcel of land devoted to agricultural use upon the basis of the agricultural income or productivity attributable to the inherent capabilities of such land in its current usage under a degree of management reflecting median production levels in the manner hereinafter provided.

For the purpose of the foregoing provisions of this section the phrase "land devoted to agricultural use" shall mean and include land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including, but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products.

The Board rules that the evidentiary burden is on the Taxpayer as to the classification of the property and on the County as to the valuation.

In regard to the classification of the property, the Board finds the County's classification of vacant should be sustained. The Taxpayer has not shown by a preponderance of the evidence that the haying activity on the subject property meets the requirement of K.S.A. 79-1476. The tax year at issue is 2019 and, in that tax year, the Taxpayer made no provision for haying of the prairie grasses, had no agricultural income, and provided no evidence such as receipts, photographs, or other evidence of agricultural activity on the property. The Board finds that the subject property is not "devoted to agricultural use" and thus the requirements of K.S.A. 79-1476 have not been met.

As to the valuation of the subject property, the Board finds the current value of $25,000 should be sustained. Insufficient information was provided by the County regarding the sales used to estimate the value for the Board to make an effective comparison to the subject, and the Board finds the County has failed to sustain its burden to support its recommended valuation. The Board further finds the Taxpayer demonstrated that the County's comparable sales are dissimilar to the subject in location, frontage, and location in the flood plain. That being said, the Board further finds the subject does have contributory value to the adjacent improved parcel owned by the Taxpayer and could have value to other adjacent landowners. The Taxpayer did not conclusively establish that the subject parcel
could not be developed, though development may be limited by the flood plain concerns. After considering all of these factors, the Board concludes the subject property should be valued at $25,000 for tax year 2019.

IT IS THEREFORE ORDERED that the subject property should be classified as vacant and valued at $25,000 for tax year 2019.

IT IS FURTHER ORDERED that the appropriate Johnson 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. This summary decision is issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto.

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 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 (3) days for mailing pursuant to statute). The Parties should note that, pursuant to K.S.A. 2016 Supp. 74-2426(c)(4)(A), in regard to any petition for review of the Board's order filed in the Kansas Court of Appeals, for purposes of such an appeal, the Board's order shall become final only after the issuance of a full and complete opinion.

Rather than filing a petition for reconsideration, any aggrieved party may request, within 14 days of receiving this order, a full and complete opinion be issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto (allowing an additional three (3) days for mailing pursuant to statute).

Rather than filing a petition for reconsideration or a request for a full and complete opinion, any Taxpayer has the right to appeal this order of the Board by filing a petition with the district court pursuant to K.S.A. 74-2426(c)(4)(B), and amendments thereto. Said petition for judicial review must be filed within 30 days from the date of certification of this order. See K.S.A. 77-613(b) and (c), and amendments thereto 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 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

RONGALD C. MASON, CHAIR

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 No. 2019-6281-EQ and any attachments thereto, was placed in the United States Mail, on this 18th day of March, 2020 addressed to:

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Sue A Stewart
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Thomas G Franzen, County Treasurer
Johnson County Admin Bldg
111 S Cherry St Ste 1500
Olathe, KS 66061-3451

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

Joelene R. Allen, Secretary
BEFORE THE BOARD OF TAX APPEALS  
STATE OF KANSAS  

IN THE MATTER OF THE APPEAL OF  
ST. CLAIRE, WILLIAM JR. & KELLY FROM  
AN ORDER OF THE DIVISION OF  
TAXATION ON ASSESSMENT OF  
INDIVIDUAL INCOME TAX  

Docket No. 2019-5182-DT

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

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 oral arguments in this matter on March 2, 2020. The Taxpayer, William Jr. and Kelly St. Clair, appeared by Gerald Capps, Attorney. The Kansas Department of Revenue, Division of Taxation (the “Department”) appeared by Nathan D. Hoeppner, Attorney. The tax year at issue is 2015.

After considering all of the arguments presented, the Board finds and concludes as follows:

The Board has jurisdiction of the subject matter and the parties, as an appeal has been properly and timely filed pursuant to K.S.A. 2018 Supp. 74-2438.

Procedural History

On August 15, 2019, the parties filed Stipulations of the Parties. On October 21, 2019, the Taxpayer filed Taxpayer’s Motion for Summary Judgment and Memorandum in Support Thereof. On October 21, 2019, the Department filed Kansas Department of Revenue’s Motion for Summary Judgment and Kansas Department of Revenue’s Memorandum in Support of Motion for Summary Judgment. On November 20, 2019, the Department filed Kansas Department of Revenue’s Response to Taxpayer’s Motion for Summary Judgment. On November 21, 2019, the Taxpayer filed Taxpayers’ Response to Kansas Department of Revenue’s Motion for Summary Judgment.

Stipulated Facts and Issue

Both parties assert that no genuine issue as to any material fact exists and each argues it is entitled to judgment as a matter of law. The Stipulations of the Parties are attached hereto as “Attachment A”.
The issue, as stated in *Kansas Department of Revenue's Memorandum in Support of Motion for Summary Judgment* is as follows:

Does Senate Substitute for House Bill 2109 apply retroactively to the beginning of 2015 to remove guaranteed payments from the subtraction modification for the entire 2015 tax year?

**Applicable Statutes and Regulations**

The statute pertinent to the issues in this appeal is K.S.A. 79-32,117. In 2015, the Kansas Legislature amended K.S.A. 79-32,117(c)(xx) to remove guaranteed payments from the subtraction modification effective as of the publication in the statute book. Senate Substitute for House Bill 2109, 2015 Leg (Kan. 2015) reads:

Sec. 3. K.S.A. 2014 Supp. 79-32,117 is hereby amended to read as follows:

(xx) For all taxable years beginning after December 31, 2012, the amount of any...

(2) net income, not including guaranteed payments as defined in section 707(c) of the federal internal revenue code and as reported to the taxpayer from federal schedule K-1 (form 1065-B), in box 9, code F or as reported to the taxpayer from federal schedule K-1 (form 1065) in box 4, from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual tax return...

Sec. 36. This act shall take effect and be in force from and after its publication in the statute book.

**Summary Judgment Standards**

Motions for summary judgment are governed by K.S.A. 60-256 and Kansas Supreme Court Rule 141. See K.A.R. § 94-5-15(d). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. K.S.A. 60-256. The purpose of summary judgment is to eliminate delay in legal disposition when there is no real issue of material fact. *Timi v. Prescott State Bank*, 220 Kan. 377, 386, 553 P.2d 315 (1976).
Summary judgment is a drastic procedural remedy. The movant has the strict burden of demonstrating that there are no factual questions and that judgment as a matter of law is appropriate. See Saliba v. Union Pac. R.R. Co., 264 Kan. 128, 131, 955 P.2d 1189 (1998). "The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. (Citations omitted.)" State ex rel. Stovall v. Reliance Ins. Co., 278 Kan. 777, 788, 107 P.3d 1219 (2005).

Department's Arguments

The Department requests that the Board grant summary judgment as a matter of law finding that the Department's assessment of Kansas income tax to the Taxpayers should be upheld.

The Department argues that the language in Senate Substitute for House Bill 2109 is clear in its intent that the amendment to K.S.A. 79-32,117(c)(xx) applies to the entire 2015 tax year. The Department states that, if the statute was unclear or ambiguous, legislative history provides further support that removal of guaranteed payments from the subtraction modification was intended to apply to the entire 2015 tax year. Finally, the Department asserts that the application of Senate Substitute for House Bill 2109 to guaranteed payments received before July 1, 2015, does not constitute a retroactive application of the law.

Taxpayer Arguments

The Taxpayer argued that the plain language of Senate Substitute for House Bill 2109 indicates it is effective as of July 1, 2015. Thus, the Taxpayer argues guaranteed payments received prior to July 1, 2015, are not subject to the amendment. The Taxpayer further asserted that, as the language regarding the effective date is clear and unambiguous, the legislation should not be read to add language not found in it – namely an effective date of January 1, 2015. Had the legislature intended the legislation to have an effective date of January 1, 2015, it would have said so. Finally, the Taxpayer argued the statute applies prospectively unless the language conveys an intent for it to apply retrospectively and the Legislature gave no indication this bill should apply retrospectively.
Findings and Conclusions

After reviewing the parties' Joint Stipulations, the Board determines that there are no genuine issues as to any material fact in this matter.

Further, upon review of the motions filed herein and after consideration of the parties' oral arguments, the Board finds that the Department is entitled to judgment as a matter of law.

Senate Substitute for House Bill 2109 excludes guaranteed payments as defined in §701(c) from the subtraction modification. The bill provides that any guaranteed payments reported on the K-1 (Form 1065-B) box 9 or K-1 (Form 1065) box 4 are not included in the K.S.A. 79-3117(c)(xx) subtraction modification. The referenced K-1s are prepared after the tax year has ended in preparation for filing the 2015 taxes and would include guaranteed payments from the entire 2015 tax year. No provision was made in Senate Substitute for House Bill 2109 regarding the timing of the guaranteed payments or to allow a portion of guaranteed payments received in 2015 to be excluded.

It is a fundamental rule of statutory construction that the intent of the legislature governs if that intent can be ascertained. In re Appeal of LaFarge Midwest/Martin Tractor Co., Inc., 293 Kan. 1039, 1045, 271 P.3d 732 (2012) (citation omitted). To determine legislative intent, the tribunal must first examine the language used in the statute, giving common words their ordinary meaning. LaFarge, 293 Kan. at 1045; In re Appeal of Wedge Log-Tech, L.L.C., 48 Kan. App.2d 804, 812, 300 P.3d 1105, rev. denied (2013). “When the plain language of a statute is unambiguous, we are to give effect to that language without resorting to principles of statutory construction or legislative history.” In re Application of TransCanada Keystone Pipeline, L.P., 48 Kan. App. 2d 838, 843, 301 P.3d 335, rev. denied (2013). Tax statutes should not be read to add that which is not readily found in them or to read out what as a matter of ordinary language is in them. In re Appeal of Atchison Cablevision L.P., 262 Kan. 223, 228, 936 P.2d 721 (1997).

The Board finds the legislative intent in Senate Substitute for House Bill 2109 to be clear that the amendment to K.S.A. 79-32,117(c)(xx) applies to the entire 2015 tax year.

If the legislative intent of Senate Substitute for House Bill 2109 was ambiguous, the Board notes that legislative history supports the Department's position. As noted in Kansas Department of Revenue's Memorandum in Support of Motion for Summary Judgment, the summary of Senate Substitute for House Bill 2109 states, “The bill revises, effective for tax year 2015, an income tax subtraction modification for certain pass-through non-wage business income to require that
guaranteed payments from businesses are counted as income in determining Kansas adjusted gross income." Clearly the legislation was intended to apply to the entire tax year of 2015.

Finally, the Board finds that Senate Substitute for House Bill 2109 is a prospective, not retroactive, application of the law. As noted previously, tax returns and supporting schedules would be prepared after tax year 2015 ended and filed in 2016. The impacts of the amendment to K.S.A. 79-3117(c)(xx) would occur subsequent to its effective date.

The Board therefore concludes the Department's assessment of Kansas income tax to Taxpayers should be upheld.

IT IS THEREFORE ORDERED that, for the reasons stated above, Kansas Department of Revenue's Motion for Summary Judgment granted.

IT IS FURTHER ORDERED that Taxpayer's Motion for Summary Judgment is denied.

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.
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, CHAIR

JAMES D. COOPER, BOARD MEMBER

DEVIN SPRECKER, BOARD MEMBER

JOELENE R. ALLEN, SECRETARY
CERTIFICATE OF SERVICE

I, Joeline 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 No. 2019-5182-DT and any attachments thereto, was placed in the United States Mail, on this ___ day of ____, 20___, addressed to:

William St Clair Jr
Kelly St Clair
2625 Verona Rd
Mission Hills, KS 66208

Gerald Capps, Attorney
Allen Gibbs and Houlik LC
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Wichita, KS 67202-4868

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

General Counsel
Ks Dept of Revenue Legal Services Bureau
109 SW 9th St
Topeka, KS 66601

Nathan D Hoeppner, Attorney
Ks Dept of Revenue Legal Services Bureau
109 SW 9th St
Topeka, KS 66601

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

Joeline R. Allen, Secretary
IN THE MATTER OF THE APPEAL OF )
ST. CLAIR, WILLIAM JR. & KELLY ( ) Docket No. 2019-5182-DT

STIPULATIONS OF THE PARTIES

COMES NOW the Taxpayers, William St. Clair Jr. and Kelly St. Clair and the Kansas Department of Revenue ("KDR"), by and through their respective attorneys of record, and submit their Stipulations of Parties.

Stipulations

1. William P. St. Clair Jr. and Kelly St. Clair are residents of the state of Kansas. Mr. and Mrs. St. Clair timely filed their 2015 Kansas K-40 with the KDR.

2. For tax year 2015, Mr. St. Clair received $583,279 in Guaranteed Payments from Cobalt Boats, LLC. For purposes of filing the 2015 Kansas K-40, Mr. and Mrs. St. Clair included in Kansas adjusted gross income only the Guaranteed Payments received after July 1, 2015 ($310,273).

3. A "Guaranteed Payment" is a payment to a partner (in a partnership) or a member (in a limited liability company) in his or her partner or member capacity for services rendered to the partnership or limited liability company without regard to the income of the entity. This payment is for managing the day-to-day operations of the entity and is made regardless of whether the entity makes a profit. The term Guaranteed Payments as used in K.S.A. 79-32,117(c)(xx) is defined in 26 U.S.C. § 707(c).
4. During the 2015 Legislative Session, Senate Substitute for House Bill 2109 ("the Bill") was passed and signed into law. Section 3 of the Bill amended K.S.A. 79-32,117(c)(xx). This amendment reduced the subtraction modification which could be claimed for net profit from business by excluding guaranteed payments from the subtraction modification. The amendment subjected guaranteed payments to Kansas income tax.

5. Section 36 of the Bill states "[t]his act shall take effect and be in force from and after its publication in the statute book."

6. The Bill was published in the statute book on July 1, 2015.

7. On November 26, 2018, the KDR issued a letter adjusting Mr. and Mrs. St. Clair's 2015 K-40. KDR increased Mr. and Mrs. St. Clair's addition modification on line A12 of Schedule S from $310,273 to $583,279, an increase of $273,006. This addition modification adjustment represents the Guaranteed Payments received by the Mr. St. Clair prior to July 1, 2015.

8. By letter dated February 19, 2019, Mr. and Mrs. St. Clair timely filed a Request for Informal Conference with the KDR disputing the KDR's adjustment to the 2015 K-40.

9. The KDR issued its Written Final Determination on June 24, 2019. The KDR upheld the KDR's letter adjusting the taxpayers' 2015 income tax return. Specifically, the KDR ruled that

"The statutory amendment specifically refers to information and forms that would be part of a taxpayer's 2015 federal income tax return (or supporting documents). This information and these forms would clearly include the entire 2015 tax year. Knowing this, the Legislature did not provide a means of bifurcating income into pre- and post-effective date amounts. The logical conclusion is that the Legislature intended the result reached by the Department."
Stipulated and Prepared by:

KANSAS DEPARTMENT OF REVENUE

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