

**REPORT OF THE JUDICIAL COUNCIL
ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE
ON THE APPROPRIATE ROLE OF NON-ATTORNEY TAX CONSULTANTS IN
PROCEEDINGS BEFORE THE KANSAS COURT OF TAX APPEALS**

INTRODUCTION

In June 2013, at the request of Senator Jeff King, the Judicial Council agreed to study the appropriate role of non-attorney tax consultants in proceedings before the Kansas Court of Tax Appeals. The Council assigned the study to its Administrative Procedure Advisory Committee, which prepared this report.

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EXECUTIVE SUMMARY

The Administrative Procedure Advisory Committee (Committee) has prepared this report to explain the issues, the applicable law, and the pros and cons of non-attorney tax consultants representing taxpayers before the Kansas Court of Tax Appeals (COTA). The Committee hopes that this report will assist legislators in making policy decisions about the parameters of that representation.

In undertaking this study, the Committee solicited input from a number of interested parties. The Committee concluded that all parties agree there should be some role for non-attorney tax representatives in proceedings before COTA, particularly in the small claims division. However, in order to address some of the problems that have arisen with that representation, the parties also agree that there should be some certification process for tax consultants who wish to represent taxpayers before COTA and there should also be a code of conduct or ethics that applies to tax consultant representatives.

Answering the question of what role non-attorney tax representatives should play requires a balancing of many interests, both public and private. For example, there is a tension between allowing a taxpayer the freedom to choose a representative, and to accept personal responsibility for the consequences of that choice, while at the same time protecting the taxpayer from potentially unethical or incompetent representation by a non-attorney who is not bound by ethics rules and may not fully understand how to best present the taxpayer's case in a legal environment, including preserving issues for future review by the Court of Appeals. Also, the general public has an interest in having an administrative system for resolving tax disputes that functions well by the parties and their representatives following prescribed procedures.

Requiring tax consultant representatives to be legally recognized by a certification process and to comply with a code of ethics could alleviate some of the concerns about their participation in administrative proceedings. For example, the certification process could ensure that tax consultants have the necessary training to navigate the tax appeal process and that they are educated on ethical issues and responsibilities. Requiring tax consultants to comply with a

code of ethics could introduce better accountability and a discipline mechanism to weed out any tax consultants who commit misconduct or are deemed incapable of responsibly representing taxpayers.

In balancing the interest of taxpayers to choose non-attorney tax consultant representatives and the need to protect unwary taxpayers from unethical or incompetent representation, at least two states have chosen the approach described above. In Tennessee and Texas, tax consultants must demonstrate competency and be registered to practice their profession. They must abide by standards of conduct and ethics and are subject to sanctions if they do not comply. If Kansas were to take a similar approach, these two states' laws might serve as a model.

COMMITTEE MEMBERSHIP

The following members of the Administrative Procedure Advisory Committee participated in the study:

Carol L. Foreman, Chair, Topeka; practicing attorney and former Deputy Secretary of the Department of Administration

Athena Andaya, Topeka; Deputy Attorney General

Martha Coffman, Lawrence; General Counsel for the Office of Judicial Administration

Tracy T. Diel, Topeka; Director of Procurement and Contracts for the Department of Administration and former Director of the Office of Administrative Hearings

James G. Flaherty, Ottawa; practicing attorney

Jack Graves, Wichita; practicing attorney

Prof. Richard E. Levy, Lawrence; Professor at the University of Kansas School of Law

Mark W. Stafford, Topeka; practicing attorney

Michele Tunnell, Topeka; Administrative Law Judge with the Office of Administrative Hearings

Two legislators with an interest in the topic also served on the Committee on a temporary basis during the study:

Senator Terry Bruce, Hutchinson; State Senator from the 34th District

Representative Ron Ryckman, Jr., Olathe; State Representative from the 78th District

Two members of the Committee, Court of Appeals Judge Steve Leben and Supreme Court Justice Eric Rosen, recused themselves from participating in the study because of related cases pending on appeal before the Court of Appeals.

BACKGROUND AND METHOD OF STUDY

The Committee's assigned task was to study the appropriate role of non-attorney tax consultants in proceedings before the Kansas Court of Tax Appeals (COTA). Specifically, should non-attorney tax consultants be able to sign pleadings, represent clients, control tax appeal litigation and obtain contingency fees for the recovery of taxes in COTA appeals? An excerpt from Senator King's letter requesting the study is attached as Appendix A.

The Committee learned that the issue of non-attorney tax consultants representing taxpayers before COTA has come to the forefront recently because of a number of cases where COTA dismissed taxpayers' appeals on the ground that it lacked subject matter jurisdiction. COTA determined that the taxpayers' notices of appeal were ineffective because they had been improperly signed by non-attorney tax consultants rather than by the taxpayer or the taxpayer's attorney, and COTA declined to allow the taxpayers to cure the defect by filing new, properly signed notices of appeal. COTA also made a number of findings about the propriety of the relationship between the taxpayers, the tax consultants and their attorneys, including their fee arrangements. Five of these cases were appealed to Court of Appeals, where they were consolidated and are currently in the briefing process. See *In the Matter of the Protest of Lyerla, Kathy L. Liv. Trust for the Year 2011 in Johnson County, Kansas*, Case No. 109,577.

The Committee held four meetings on the topic. As a starting point, the Committee looked at the role of non-attorney representatives in state administrative hearings generally, both

in Kansas and across the country. The Committee solicited input from all Kansas agencies and asked staff to conduct research on the law in other jurisdictions. Because the responses from other Kansas agencies did not reveal any problems with non-attorney representation in other contexts, the Committee then decided to focus more narrowly on COTA and invited comments from representatives of various interested groups including tax consultants, property owners, counties and tax attorneys.

With input from its legislative members, the Committee determined that it could be most helpful to the legislature by preparing a white paper explaining the issues, the history, the applicable law, and setting out the pros and cons of non-attorney representation before COTA. Accordingly, the Committee makes no recommendation as to specific legislation but hopes that this report will offer legislators some guidance as they make policy choices.

SUMMARY OF COMMENTS FROM INTERESTED PARTIES

The Committee invited the following representatives from the various interested groups to attend a meeting and offer their input and comments:

- Kathryn Myers, Assistant Johnson County Counselor
- Jerry Chatam, President of J.W. Chatam and Associates, Inc. (tax consultant)
- Otto Westerfeld, Jr., Director of Real Estate at Johnson County Management, LLC (property owner and taxpayer)
- Lucky DeFries of Coffman, DeFries & Nothern, PA (tax attorney)

Stephen Jones, General Counsel for COTA, also attended the meeting and answered procedural questions about COTA for the Committee but did not make a presentation. It should be noted that Mr. Chatam and Ms. Myers are both involved in the cases pending in the Court of Appeals, all of which originated in Johnson County.

Both of the legislative members of the Committee as well as Representative Jerry Lunn, who attended the meeting, informed the Committee that the overarching concern of their constituents is the perception of recent overreaching and unfair treatment by COTA. Mr.

Westerfeld and Mr. Chatam elaborated on this perception. Mr. Westerfeld stated that his main concerns were the fairness of the process and his belief that taxpayers should be allowed the freedom to retain the representative of their choice and then bear the consequences of that decision.

Mr. Chatam stated that the appeal process must be fair. He argued that if a non-attorney county appraiser is allowed to represent the county before COTA then a non-attorney tax consultant should be able to represent his or her client. He also argued that simply signing an appeal form at the direction of a client or entering into a contingency fee agreement should not be deemed the unauthorized practice of law by COTA.

Ms. Myers spoke on behalf of county counselors. She explained that one of the biggest concerns of county counselors is that there are no licensing or qualifications requirements for tax consultants and no code of ethics with which they must comply. She argued that tax consultants should have a role in the informal small claims division of COTA but that they should be regulated and subject to a code of ethics. She also argued that non-attorneys should not be allowed to represent clients in the regular division of COTA because those proceedings have the same formality as district court proceedings and require legal skill and knowledge. In addition, it is problematic for non-attorneys to appear in the regular division when they are not subject to the same ethics rules as attorneys and there is no regulatory authority to investigate and discipline possible misconduct.

Ms. Myers also pointed out what she believes are improper practices of some tax consultants, such as filing a large number of appeals without investigating the merits of each case. This high volume forces counties to settle some cases because they don't have the resources to defend them all. Ms. Myers also stated that some tax consultants "horsetrade" cases, or offer to dismiss smaller cases if the county will come down on its valuation of a larger commercial property.

Mr. Chatam and Mr. Westerfeld agreed that some kind of certification process and code of ethics for tax consultants might be a good solution to the perceived problem.

Mr. DeFries offered his perspective as a tax attorney. He noted that the issue of the appropriate role of tax consultants before COTA is one that has been around for some time. As to the question of whether tax consultants should be allowed to sign notices of appeal, COTA has made it clear for some time that that is not acceptable. Mr. DeFries drew the Committee's attention to COTA's regulations, which set out its rules on authorized representation and who may sign pleadings.

Mr. DeFries stated that tax consultants are widely used across the country and that contingency fee agreements are common practice and often preferred by taxpayers.

After hearing from all of the interested parties who attended the meeting, Committee members asked questions and engaged in further discussion. As to the question of whether tax representatives should be allowed to sign notices of appeal, a Committee member pointed out that the real problem is that an attorney who signs a notice of appeal is attesting that the appeal has a good faith basis and the attorney is subject to sanction if the appeal is frivolous. One solution might be to impose a requirement that any person signing the notice of appeal is vouching for the good faith basis for the appeal rather than prohibiting a non-attorney from signing altogether.

Mr. Chatam responded that a tax consultant only has 30 days in which to decide whether to file an appeal and that is not enough time to fully investigate the value of a large commercial property. Ms. Myers countered that if a tax consultant can't investigate the details of each case it takes on, then the consultant has too many cases. It was suggested that a possible solution to this problem might be to extend the time for appeal rather than eliminating the requirement of due diligence before filing an appeal.

From the discussion, the Committee concluded that all parties agree that there is some role for non-attorney tax consultant representatives, at least in the more informal small claims division of COTA, and that some reasonable regulation of tax consultants, including a code of ethics, would be beneficial.

CURRENT LAW ON REPRESENTATION BEFORE COTA

Nature of COTA

The Court of Tax Appeals (formerly called the Board of Tax Appeals) is an administrative agency in the executive branch of state government. *In re Tax Exemption of Kouri Place, LLC*, 44 Kan. App. 2d 467, 471, 239 P.3d 96 (2010). The Court of Tax Appeals (COTA) is an independent agency with quasi-judicial powers that functions as an administrative law court to hear cases under the Kansas Administrative Procedure Act involving ad valorem (property), income, sales, compensating use, and inheritance taxes, and other state and local taxation matters. See K.S.A. 74-2433a; 74-2437 and 74-2438. The name change in 2008 from the Board of Tax Appeals to the Court of Tax Appeals had no effect on the nature of the agency as an administrative tribunal.

Representation at informal hearing and in the small claims division

The rules on who may represent a taxpayer before COTA differ depending upon the stage of the appeal process. In the context of a property tax valuation appeal, if a taxpayer wishes to appeal the valuation of his property, the first step is an informal meeting with the county appraiser. The taxpayer may be represented by another person at the informal meeting, but if the representative is not an attorney, the taxpayer must file a “Declaration of Representation” form.

Depending on the type of property involved, a taxpayer may appeal the result of the informal meeting to either the small claims and expedited hearings division of COTA (small claims division) or the regular division of COTA. Hearings in the small claims division are informal. They are conducted before a hearing officer in the county where the property is located (or an adjacent county) and are sometimes conducted by telephone. Hearings are not recorded and no transcript is kept.

In the small claims division of COTA, a taxpayer may be represented by “an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member

of the taxpayer's immediate family or an authorized employee of the taxpayer." K.S.A. 74-2433f(f). In addition, the county may be represented by the county appraiser, county attorney or counselor, or other designated representative. K.S.A. 74-2433f(f).

Representation in the regular division

Hearings in the regular division of COTA are more formal than hearings in the small claims division. Regular division hearings are held before one or more of the three tax court judges of COTA. They are conducted pursuant to the Kansas Administrative Procedure Act, the rules of civil procedure, and COTA's regulations. COTA creates an official record of hearings before the regular division so that they may be reviewed if appealed to the Kansas Court of Appeals.

In the regular division of COTA, the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.*, governs. K.S.A. 74-2426 and 74-2438. In hearings conducted under KAPA, a corporation or other artificial entity (such as a government entity) may be represented by a "duly authorized representative" unless the agency requires representation by an attorney. An individual may be represented by an attorney "or, if permitted by law, other representative." K.S.A. 77-515. There is currently no statute authorizing non-attorney representation of individuals in the regular division of COTA. There is, however, a COTA regulation which allows such representation.

COTA regulation K.A.R. 94-5-6 authorizes non-attorney representation of both individuals and corporate or other artificial entities, even in the regular division, but also provides that such representatives "shall not engage in the unauthorized practice of law" and that their participation "shall be limited to providing fact and opinion testimony or other evidence deemed competent by the court." K.A.R. 94-5-6. COTA also requires that all notices of appeal and other pleadings be signed "by the party or the party's attorney." K.A.R. 94-5-4.

Flowcharts showing the COTA property tax appeals process are attached as Appendix B. Copies of the statutes mentioned in this section and relevant COTA regulations are attached as

Appendices C and D.

Attorney General Opinion

In 1993, COTA (then BOTA) requested an Attorney General opinion on the parameters of non-attorney representation in tax appeal proceedings. At that time, the only statute that authorized non-attorney representation was K.S.A. 77-515. (K.S.A. 74-2433f was not enacted until 1998.) The Attorney General concluded that a non-attorney representative could participate in tax appeal proceedings but could not engage in conduct that would constitute the unauthorized practice of law, *e.g.*, examining witnesses, presenting evidence, making legal arguments, filing pleadings, or performing other functions deemed to be the practice of law. Att’y Gen. Op. No. 1993-100.

When the Committee solicited input from other Kansas agencies, it learned that several other agencies in addition to COTA rely on this Attorney General opinion for guidance on non-attorney representation in administrative proceedings before their agencies. A copy of the Attorney General opinion can be found at Appendix E.

UNAUTHORIZED PRACTICE OF LAW

As evidenced by the 1993 Attorney General opinion, the question of whether non-attorneys should be allowed to represent clients before administrative agencies is part of a larger question – what constitutes the unauthorized practice of law?

In Kansas

The Kansas Supreme Court has the inherent authority to regulate the practice of law in Kansas and to prevent the practice of law by unauthorized persons. However, the Court has stated it is not possible to offer an exact definition of the practice of law and each case must be considered on its own facts. *State ex rel. Stephan v. Williams*, 246 Kan. 681, 690, 793 P.2d 234 (1990). The *Williams* court also stated that, while a non-attorney may represent himself in court,

he may not appear in court on behalf of any other person, give legal advice to another person, or assist another person “in any matter requiring legal knowledge and training.” 246 Kan. at 691.

The Kansas Supreme Court has indicated a willingness to allow at least some exceptions to the general rule that a non-attorney may not appear in court on behalf of another person. In *Babe Houser Motor Co. v. Tetreault*, 270 Kan. 502, 14 P.3d 1149 (2000), the Court held that a corporation may appear in a small claims proceeding through a full-time employee or officer who is not a licensed attorney. The Court noted the general rule that a corporation may appear in court only by a licensed attorney, but held that a provision of the small claims act allowing a corporation to appear through a non-attorney employee or officer was consistent with the intended purpose of small claims proceedings to provide “accessible, affordable justice to those whose claims are too small to merit attorney involvement.” 270 Kan. at 508.

Both *Williams* and *Babe Houser* dealt with proceedings in the district court, not an administrative tribunal. Kansas appellate courts have not decided a case involving non-attorney representation in an administrative proceeding.

Because the Kansas Supreme Court is the ultimate arbiter of what is the unauthorized practice of law, it could strike down any law it viewed as impermissibly intruding upon its inherent authority to regulate the practice of law.

Rationale for prohibiting the unauthorized practice of law generally

It may be helpful to understand some of the arguments surrounding the issue of unauthorized practice. The rationale for prohibiting the unauthorized practice of law is twofold. The first justification is to protect the public from being advised or represented by someone who is unqualified or incompetent. ABA/BNA Lawyers’ Manual on Professional Conduct, 21:8002-03. The second justification is to protect the public from unethical behavior. Attorneys can be sanctioned under ethics rules and sued for malpractice. But if a non-attorney representative commits misconduct, the injured party’s only remedy is a civil lawsuit and there is no recourse to malpractice insurance or a client protection fund. Swank, *Non-attorney Social Security*

Disability Representatives and the Unauthorized Practice of Law, 36 S. Ill. Univ. L.J. 223, 229 (Winter 2012); Clayton, *Are We Our Brother's Keepers? A Discussion of Non-attorney Representation Before Texas Administrative Agencies and Recommendations for the Future*, 8 Tex. Tech. Admin. L.J. 115, 127-28 (Spring 2007).

On the other hand, the need to protect the public from incompetent or unethical representation must be balanced against the benefit to the public of increased access to legal services, convenience and reduced costs. Clayton at pp. 128-29.

Another justification sometimes offered for prohibiting the unauthorized practice of law is the interest of lawyers in protecting their occupation, but this must be balanced against the interest of lay persons in pursuing the occupation of their choice as well as the public interest in freedom of choice and free market competition. Stevens, *The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach*, 43 Vand. L. Rev. 245, 265 (January 1990).

EXCEPTION FOR SOME NON-ATTORNEY REPRESENTATION BEFORE ADMINISTRATIVE AGENCIES

A number of jurisdictions, including the federal government, allow non-attorney representation before administrative agencies at least under some circumstances. ABA/BNA Lawyers' Manual on Professional Conduct, 21:8009. Courts have upheld statutes authorizing non-attorney representation in various kinds of administrative proceedings. See, e.g., *Unauthorized Practice of Law Comm. v. Employers Unity Inc.*, 716 P.2d 460 (Colo. 1986) (unemployment compensation hearings); *Sudzus v. Dep't of Employment Sec.*, 914 N.E.2d 208 (Ill. App. Ct. 2008) (unemployment compensation hearings); *State Bar of Michigan v. Galloway*, 369 N.W.2d 839 (Mich. 1985) (non-attorneys may represent employer clients in hearings before employment security commission, notwithstanding UPL statutes); *Board of Education v. New York State Public Employment Relations Board*, 649 N.Y.S.2d 523 (N.Y. App. Div. 1996) (collective bargaining representative could be represented by nonlawyer labor relations specialist); *Henize v. Giles*, 490 N.E.2d 585 (Ohio 1986) (unemployment compensation

hearings); *Unauthorized Practice of Law Comm. v. Dep't of Workers' Comp.*, 543 A.2d 662 (R.I. 1988) (informal hearings before workers' compensation department); *In re Burson*, 909 S.W. 2d 768 (Tenn. 1995) (nonlawyers permitted to represent taxpayers contesting assessment of real and personal property before local and state boards of equalization).

In most of these cases, courts have concluded either that the non-attorney representation before administrative agencies does not constitute the practice of law or that, even though the representation does constitute the practice of law, permitting it is warranted based on public policy considerations. Stevens at p. 255.

The trend appears to be in the direction of allowing non-attorney representation. According to a 1999 survey of Unauthorized Practice Committees conducted by the American Bar Association, 11 of 34 responding jurisdictions allowed non-attorneys to participate in state administrative proceedings. By 2012, that number had more than doubled. The ABA's 2012 survey showed that 25 of 29 responding jurisdictions allow non-attorney representation and participation in administrative proceedings. Those states include: AZ, AR, CO, CT, DE, DC, FL, IN, IA, KY, ME, MO, MT, NE, NM, ND, OR, PA, SD, TN, TX, UT, VA, WA, and WI. (Kansas did not respond to either survey.)

The ABA survey does not define "participation" or set out exactly what kinds of activities (examining witnesses, filing pleadings) are allowed in each state. Nor does the survey indicate whether non-attorney participation is allowed in some agency proceedings but not others. Other sources indicate that the decision whether to allow non-attorney representation is either left to agencies to decide, or is made on an agency-by-agency basis.

Commentators have identified a number of advantages to non-attorney representation in the context of administrative hearings. First, the informal nature of such hearings without strict adherence to rules of evidence or procedure may lend itself to non-attorney representation. Legal issues are not as prevalent in administrative proceedings, and legal skills are not as vital. Also, non-attorneys may have special expertise or competence in the field that enables them to do as good a job or better at representing clients. Stevens at 265. There may be a shortage of

attorneys available to represent clients in administrative proceedings; their fees may be prohibitively high; and having attorneys involved in administrative proceedings may make them unnecessarily adversarial. Clayton at pp. 129, 132-33.

The main risks involved in non-attorney representation include possible failure to adequately present the case and failure to preserve a record for appeal. Clayton at p. 128. There is also a concern that non-attorneys are not bound by ethics rules or standards of conduct in the same way that attorneys are.

The extent to which these advantages and risks exist depends on the nature of the specific administrative proceeding. Some are more formal than others; some involve more legal issues than others. Also, as a matter of fairness, non-attorneys need to be able to determine ahead of time what conduct is permitted or prohibited before a given agency.

Non-attorney Tax Consultant Representation

In balancing the interest of taxpayers to choose non-attorney tax consultant representatives and the need to protect unwary taxpayers from unethical or incompetent representation, at least two states have chosen to allow the representation but regulate it. In Tennessee and Texas, tax consultants must demonstrate competency and be registered to practice their profession. They must abide by standards of conduct and ethics and are subject to sanctions if they do not comply. Copies of the relevant statutes and administrative rules from Tennessee and Texas are attached at Appendix F and G, respectively.

If Kansas were to take a similar approach, these two states' laws might serve as a model. The Legislature would need to decide which agency should be responsible for registering tax consultants and enforcing standards of conduct and how best to fund those functions.

CONCLUSION AS TO SPECIFIC QUESTIONS RAISED IN SEN. KING'S STUDY REQUEST

Turning to the specific questions raised by Senator King in his letter requesting the study:

Should non-attorney tax representatives be able to represent taxpayers in the regular division of COTA?

Under current law, both the county and the taxpayer may be represented by non-attorneys in the regular division of COTA. However, through its regulations, COTA places some limits on that representation. K.A.R. 94-5-6(b) provides that "any individual" may represent a party in the regular division of COTA and may "participate fully in matters before the court." However, the regulation also states that any non-attorney representative "shall not engage in the unauthorized practice of law" and "shall be limited to providing fact and opinion testimony or other evidence deemed competent by the court." K.A.R. 94-5-6(d).

The issue, then, is whether COTA's limits on non-attorney representation are reasonable. So long as COTA informs non-attorney representatives of the limits and enforces them in the same way for all kinds of non-attorney representatives (*i.e.*, both tax consultants and appraiser's office employees), some limits probably are reasonable. However, the provisions of K.A.R. 94-5-6 are somewhat internally inconsistent and could potentially be confusing to non-attorney representatives in that they purport to allow non-attorneys to represent taxpayers and "participate fully" in tax appeals but at the same time limit non-attorneys to providing testimony or other evidence.

In determining the exact parameters of the limits on non-attorney representation, there are different interests that must be balanced. For example, there is a tension between allowing a taxpayer the freedom to choose a representative, and to accept personal responsibility for the consequences of that choice, while at the same time protecting the taxpayer from potentially unethical or incompetent representation by a non-attorney who is not bound by ethics rules and may not fully understand how to best present the taxpayer's case in a legal environment,

including preserving issues for future review by the Court of Appeals. Also, the general public has an interest in having an administrative system for resolving tax disputes that functions well because parties and their representatives follow the proper procedures.

Requiring tax consultant representatives to be certified or registered and to comply with a code of ethics could alleviate some of the concerns about their participation in administrative proceedings. For example, the certification process could ensure that tax consultants have the necessary training to navigate the tax appeal process and that they are educated on ethical issues and responsibilities. Requiring tax consultants to comply with a code of ethics could introduce better accountability and a discipline mechanism to weed out any tax consultants who commit misconduct.

However, all of these competing considerations must be weighed against the backdrop of the Kansas Supreme Court's ultimate authority to decide what is the unauthorized practice of law. In other words, the Legislature must be aware that if it were to enact legislation authorizing certain activities by tax consultants or other non-attorneys, the Court might strike down any provisions that it finds too intrusive upon the Court's inherent authority to regulate the practice of law.

Should non-attorney tax representatives be able to sign pleadings or notices of appeal?

Again, there are competing interests to be balanced. On one hand, the mere signing of a form notice of appeal at the direction of a client seems to be of less consequence than the signing and filing of a pleading such as a motion or petition. As a matter of efficiency and convenience, taxpayers may prefer that tax representatives be able to perform this function on their behalf.

On the other hand, when an attorney signs a notice of appeal, or any other pleading, the attorney is vouching for the good faith basis for the appeal, and there is a disciplinary consequence for an attorney who files a frivolous appeal. There is no comparable ethical requirement for a non-attorney. Although COTA has a regulation which states that a party or party's attorney who signs a pleading is certifying that the pleading is well grounded in fact and

law and is not filed for any improper purpose (see K.A.R. 94-5-5), there does not appear to be any mechanism for COTA to enforce this regulation other than dismissal of the appeal. (Nor does this regulation apply to non-attorney tax representatives who are not allowed to sign pleadings under K.A.R. 94-5-4.)

One possible solution might be to allow tax consultant representatives to sign simple form notices of appeal while at the same time heightening accountability requirements through a code of ethics, as discussed previously. Again, if the Legislature were to choose such an approach, it should do so with the knowledge that the Supreme Court might or might not uphold such provisions.

Should non-attorney tax representatives be able to control tax litigation or obtain contingency fees for the recovery of taxes from the government through COTA appeals?

These last two questions go to the nature of the relationship between the taxpayer, the tax consultant, and any attorney they retain. Presumably, the “control” of litigation should be vested in the taxpayers. How taxpayers exercise that control is their decision to make within the parameters of the law. As with the previous questions, taxpayers have an interest in the freedom to enter into fee arrangements and hire representatives of their own choosing. Contingency fee agreements with tax representatives appear to be common practice.

On the other hand, attorneys are subject to ethical requirements as to their relationships with clients and their fee arrangements. Similar requirements could be imposed on tax consultant representatives through regulation if the Legislature decides that is appropriate.

The issue below was brought to my attention by officials at the Kansas Court of Tax Appeals. In order to explore potential avenues to address this topic, I request the issue be further studied by the Kansas Judicial Council.

- Issue: What is the appropriate role of non-attorney tax consultants in proceedings before the Kansas Court of Tax Appeals? More specifically, should non-attorney tax consultants and/or other non-attorneys or non-parties be able to: (1) sign pleadings or notices of appeal; (2) represent a client in the regular division of COTA; (3) control tax appeal litigation; and (4) obtain contingency fees for the recovery of taxes from the government through COTA appeals.

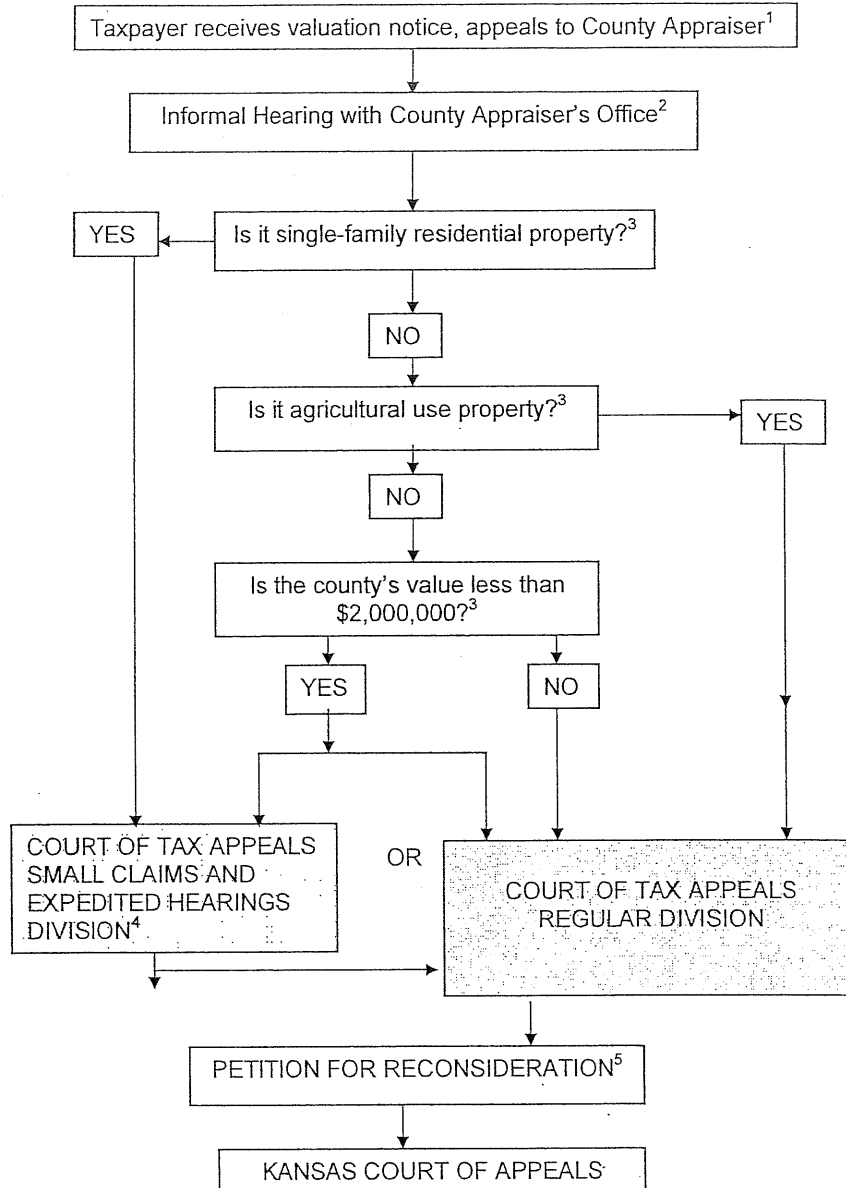
Should you have any questions or require additional information please do not hesitate to contact me at (620)714-1881.

Respectfully submitted,



Senator Jeff King
Chairman, Senate Judiciary Committee

EQUALIZATION APPEALS
WHERE NO LOCAL HEARING OFFICER PANEL IS AVAILABLE
(Pursuant to K.S.A. Chapter 79, Article 14 or 16)



¹ Appeal must be filed with County Appraiser within 30 days [K.S.A. 79-1448]

² Appeal from Informal Hearing results must be filed within 30 days [K.S.A. 79-1611 & 79-1609]

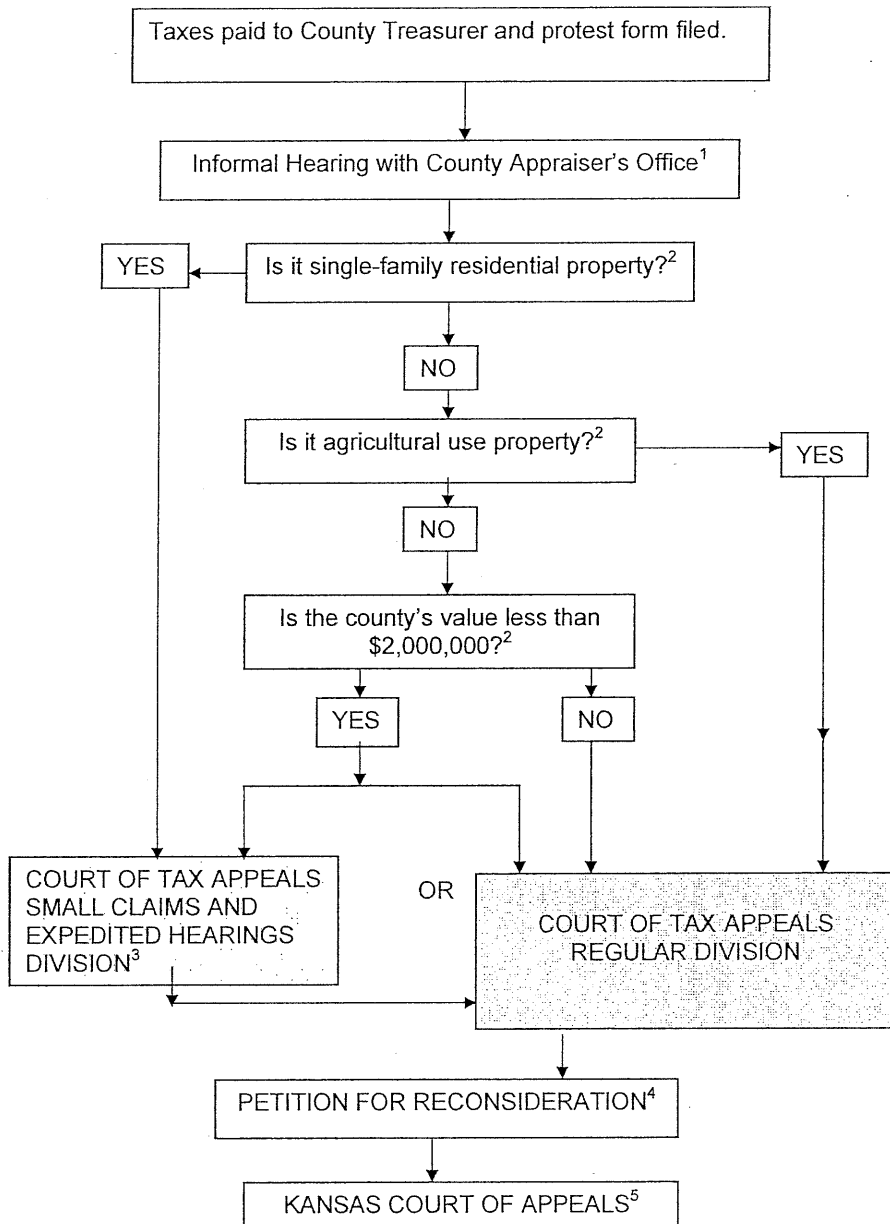
³ Small Claims and Expedited Hearings Division jurisdiction is limited and hearings are held in county where property is located or an adjacent county [K.S.A. 74-2433f]

⁴ Appeal from Small Claims and Expedited Hearings Division to COTA must be filed within 30 days [K.S.A. 74-2438]

⁵ Petition for reconsideration must be filed with COTA within 15 days [K.S.A. 74-2426, 77-529 and 77-601 et seq.]

⁶ Judicial Review of COTA decision must be filed with the Kansas Court of Appeals within 30 days [K.S.A. 77-601 et seq. and 74-2426]

PAYMENT OF AD VALOREM TAXES UNDER PROTEST
(Pursuant to K.S.A. 79-2005)



¹ Appeal from Informal Hearing results must be filed within 30 days [K.S.A. 79-2005]
² Small Claims and Expedited Hearings Division jurisdiction is limited and hearings are held in county where property is located or an adjacent county [K.S.A. 74-2433f]
³ An appeal from the Small Claims and Expedited Hearings Division to COTA must be filed within 30 days [K.S.A. 74-2438]
⁴ Petition for reconsideration must be filed with COTA within 15 days [K.S.A. 74-2426, 77-529 and 77-601 et seq.]
⁵ Judicial Review of COTA decision must be filed with the Kansas Court of Appeals within 30 days [K.S.A. 77-601 et seq. and 74-2426]

74-2426. Orders of court rendered in accordance with Kansas administrative procedure act; petition for reconsideration; costs; bond, when required; judicial review.

(a) Orders of the state court of tax appeals on any appeal, in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding before the court shall be rendered and served in accordance with the provisions of the Kansas administrative procedure act. Notwithstanding the provisions of subsection (g) of K.S.A. 77-526, and amendments thereto, a final order of the court shall be rendered in writing and served within 120 days after the matter was fully submitted to the court unless this period is waived or extended with the written consent of all parties or for good cause shown.

(b) No final order of the court shall be subject to review pursuant to subsection (c) unless the aggrieved party first files a petition for reconsideration of that order with the court in accordance with the provisions of K.S.A. 77-529, and amendments thereto.

(c) Any action of the court pursuant to this section is subject to review in accordance with the Kansas judicial review act, except that:

(1) The parties to the action for judicial review shall be the same parties as appeared before the court in the administrative proceedings before the court. The court shall not be a party to any action for judicial review of an action of the court.

(2) There is no right to review of any order issued by the court in a no-fund warrant proceeding pursuant to K.S.A. 12-110a, 12-1662 et seq., 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and statutes of a similar character. The court of appeals has jurisdiction for review of all final orders issued after June 30, 2008, in all other cases.

(3) In addition to the cost of the preparation of the transcript, the appellant shall pay to the state court of tax appeals the other costs of certifying the record to the reviewing court. Such payment shall be made prior to the transmission of the agency record to the reviewing court.

(d) If review of an order of the state court of tax appeals relating to excise, income or estate taxes, is sought by a person other than the director of taxation, such person shall give bond for costs at the time the petition is filed. The bond shall be in the amount of 125% of the amount of taxes assessed or a lesser amount approved by the court of appeals and shall be conditioned on the petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

(e) If review of an order is sought by a party other than the director of property valuation or a taxing subdivision and the order determines, approves, modifies or equalizes the amount of valuation which is assessable and for which the tax has not been paid, a bond shall be given in the amount of 125% of the amount of the taxes assessed or a lesser amount approved by the reviewing court. The bond shall be conditioned on the petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a prerequisite for filing an appeal with the state court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

History: L. 1957, ch. 429, § 11; L. 1963, ch. 404, § 1; L. 1972, ch. 342, § 80; L. 1987, ch. 293, § 1; L. 1988, ch. 356, § 288; L. 1996, ch. 264, § 10; L. 1997, ch. 126, § 5; L. 1999, ch. 126, § 8; L. 2002, ch. 186, § 3; L. 2008, ch. 109, § 16; July 1.

77-515. Participation and representation.

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be represented at the party's own expense by counsel or, if permitted by law, other representative.

(c) A state agency may require a corporation or other artificial person to participate by counsel.

History: L. 1984, ch. 313, § 15; L. 1986, ch. 362, § 4; July 1.

Supp. 74-2437; implementing K.S.A. 2010 Supp. 12-1744a and K.S.A. 2010 Supp. 74-2437; effective May 1, 1983; amended, T-85-38, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Sept. 16, 2011.)

Article 5.—PROCEEDINGS BEFORE THE COURT

94-5-1. Court regulations and procedures. (a) To the extent that the Kansas administrative procedure act or procedures prescribed by other statutes do not specifically apply, the Kansas code of civil procedure, and amendments thereto, shall apply in all proceedings before the regular division of the court.

(b) Directives guiding the court's internal affairs, access to litigants, and practice before the court may be issued by the court if the directives do not conflict with this article or other applicable provisions of Kansas law.

(c) The regulations, policies, procedures, and directives of the court shall be construed to secure expeditious determinations of all issues presented to the court. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-2. Definitions. (a) "Counsel" means legal counsel admitted to practice before the supreme court of the state of Kansas or legal counsel duly licensed and admitted to practice law in another state, if counsel has complied with the Kansas supreme court rules governing admissions *pro hac vice*.

(b) "Court" means the court of tax appeals of the state of Kansas.

(c) "Judge" means any tax law judges or the chief hearing officer serving as a judge pro tempore pursuant to K.S.A. 74-2433, and amendments thereto.

(d) "Party" means any of the following:

(1) A taxpayer, appellant, or applicant bringing or defending an action;

(2) a governmental unit bringing or defending an action;

(3) an intervenor permitted to intervene by the court; or

(4) a necessary person or entity joined by the court.

(e) "Party's attorney" means the counsel who

signed the initial pleading, application, or appeal form, or has filed an entry of appearance, on behalf of a party.

(f) "Presiding officer" means any of the following:

(1) A panel of judges;

(2) the judge assigned pursuant to K.S.A. 77-514, and amendments thereto, to conduct a status conference, prehearing conference, oral arguments, hearing, or any similar proceeding; or

(3) a court staff attorney conducting a status conference or prehearing conference to which the staff attorney has been assigned.

(g) "Secretary" means the person serving as secretary of the court pursuant to K.S.A. 74-2435, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-3. Service. (a) All court filings, including pleadings, motions, briefs, orders, decisions, notices, appearances, and any other similar documents relating to a case, shall be served on each of the parties. Service may be made by mail, facsimile, or electronic mail, unless a specific statute requires another manner of service. Postage or cost of service shall be borne by the person effecting service.

(b) Service on an attorney of record shall be deemed to be service on the party represented by that attorney. Service by mail shall be deemed complete upon mailing.

(c) The party responsible for effecting service shall endorse a certificate of mailing or service showing proof of compliance with these regulations. In the absence of this proof of compliance, a filing may be disregarded and deemed null and void.

(d) The court shall be notified within seven days of a change of mailing address of any party, any party's attorney, or any party's duly authorized representative. A separate notice of address change shall be filed for each case affected by the address change. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-4. Commencement of action; pleadings. (a) Each action shall be initiated through the filing of a notice of appeal or other pleading with the court.

(b) Except as provided in subsection (c), all notices of appeal and other pleadings shall be prepared on forms approved by the court, signed by

the party or the party's attorney, and filed with all information and supporting documentation requested in the forms. If a pleading is filed with insufficient information or is otherwise deficient, the pleading may be rejected by the court or may be accepted by the court, with supplementation by the parties required by the court.

(c) Each pleading initiating an appeal from a final action of the secretary of the Kansas department of revenue or the secretary's designee may be prepared on forms approved by the court or may be typewritten on 8½ × 11-inch white paper, with at least one-inch margins on all sides and with type appearing on only one side of the paper. Each typewritten pleading prepared pursuant to this subsection shall contain at least the following:

(1) The heading "BEFORE THE COURT OF TAX APPEALS OF THE STATE OF KANSAS" centered at the top of the page;

(2) the court docket number, if one has been assigned;

(3) a brief description of the nature of the action and citation to the specific statute under which the action is authorized;

(4) pertinent allegations of fact and law in concise and direct terms set forth in numbered paragraphs;

(5) a concise and complete statement of all relief sought;

(6) the signature of the party filing the pleading or the party's attorney; and

(7) the address and telephone number of the party and, if the party is represented by counsel, the party's attorney. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-5. Signatures of parties or counsel.

The signature of a party or the party's attorney on any pleading shall constitute a certification by the signer of all of the following:

(a) The signer has reviewed the pleading.

(b) To the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not for any improper purpose, including to harass or cause unnecessary delay or needless increase in costs. (Authorized by

and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-6. Authorized representation. (a) In the regular division of the court, counsel may enter an appearance either by signing the pleading or by filing an entry of appearance.

(b) In the absence of an entry of appearance by counsel, a party shall be deemed to appear on the party's own behalf. Any individual may represent that person and participate fully in matters before the court. Any corporation or other artificial entity may participate by and through a duly authorized representative, including an authorized officer of the corporation, an authorized member or partner of the entity, or an authorized employee of the corporation or entity. Any estate or trust may participate by a fiduciary of the estate or trust. Any county, city, or other taxing district may participate by an elected or appointed official or a designee of the official.

(c) All persons authorized to represent entities as specified in this regulation shall be identified in writing.

(d) A duly authorized representative of an individual or an artificial entity who is not a lawyer shall not engage in the unauthorized practice of law. The participation of any duly authorized representative other than a lawyer shall be limited to providing fact and opinion testimony or other evidence deemed competent by the court.

(e) Any corporation, county, or other artificial entity may be required by the court to participate by counsel. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

94-5-7. Information and assistance to self-represented litigants.

(a) Information concerning the court's rules of practice and procedures shall be made available by the court to litigants. Court staff shall be available to assist self-represented litigants concerning general matters of court procedure and access to court services. Court staff shall observe the rules prohibiting ex parte communications.

(b) All communications and filings with the court shall be directed to the offices of the court in Topeka and shall meet the requirements in these regulations and the Kansas supreme court rules of judicial conduct. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)



July 26, 1993

ATTORNEY GENERAL OPINION NO. **93-100**

Rebecca A. Sanders
General Counsel
Board of Tax Appeals
915 S.W. Harrison St., Ste. 400-S
Topeka, Kansas 66612-1505

Re:

State Boards, Commissions and Authorities--Board of Tax Appeals;
Miscellaneous Taxation Provisions--Appeals to State Board;
Representation of Parties

Statutes; Administrative Rules and Regulations and Procedure--
Administrative Procedure Act; Formal Hearings--Participation and
Representation

Synopsis:

In board of tax appeals proceedings conducted in accordance with the Kansas administrative procedures act, artificial parties such as counties and corporations may participate through a duly authorized representative such as the county appraiser or a corporate officer unless and until the board requires artificial parties to participate by counsel. While a duly authorized representative may participate in the proceedings, a non-attorney representative may not engage in the unauthorized practice of law and therefore may not examine witnesses, file pleadings, make legal arguments, or perform other functions deemed to be the practice of law. Individual taxpayers may participate in person or through an attorney authorized to practice law in this state, but may not be otherwise represented as such would constitute the unauthorized practice of law. Cited herein: K.S.A. 19-101; 74-2426; 74-2438; 77-515; K.S.A. 1992 Supp. 79-213; 79-1489; 79-2005, as amended by L. 1993, ch. 239, sec. 1; K.A.R. 92-2-10.

* * *

Dear Ms. Sanders:

You request our opinion regarding who may appear at a hearing before the board of tax appeals. Specifically you inquire whether a county which is a party in a proceeding before the board may authorize the county appraiser or other employee in the appraiser's office to represent the county or whether the county must be represented by an attorney authorized to practice in this state. Additionally you

question whether a non-attorney may represent an individual taxpayer before the board or whether that would constitute the unauthorized practice of law.

Pursuant to K.S.A. 74-2426, 74-2438, K.S.A. 1992 Supp. 79-213, 79-1489 and 79-2005, as amended by L. 1993, ch. 239, sec. 1, hearings before the board of tax appeals, at least in the listed instances, are to be conducted in accordance with the Kansas administrative procedures act (KAPA), K.S.A. 77-501 *et seq.* The KAPA contains the following provision:

"(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be represented at the party's own expense by counsel or, if permitted by law, other representative.

(c) A state agency may require a corporation or other artificial person to participate by counsel." K.S.A. 77-515.

In our opinion a county would be considered an artificial person for purposes of K.S.A. 77-515. It is a body corporate and politic by virtue of K.S.A. 19-101. Thus the county may participate by a duly authorized representative unless the board requires participation by counsel. The board's current regulations do not require that counties participate by counsel, but rather provide that an elected or appointed officer of a county may appear on behalf of the county "except where a statute or the board prohibits an appearance by an elected or appointed officer and requires the county . . . to be represented by an attorney." K.A.R. 94-2-10(a). It therefore appears that a county appraiser or other employee in the appraiser's office may *participate* in a hearing before the board of tax appeals on behalf of the county unless and until the board requires that counties participate by counsel.

This does not, however, mean that a non-attorney representative, such as an unlicensed county appraiser, may engage in the unauthorized practice of law. Section 4-203 of the uniform law commissioners' model act on state administrative procedure is virtually identical to subsections (a) and (b) of K.S.A. 77-515. The comment accompanying this section states in part:

"The right of a corporation or other artificial person to participate as a party by a 'duly authorized representative' is intended to permit a corporation to participate by either an attorney or a non-attorney, unless participation by a non-attorney violates state law regarding the unauthorized practice of law, in which case the non-attorney would not be a 'duly authorized' representative.

Subsection (b) guarantees

to each party the right to be advised and represented, at the party's expense. This subsection incorporates other laws of the state, regarding the extent if any to which nonlawyers may perform the functions of advice and representation. Thus this Act is not a source of authority for

nonlawyers to advise or represent parties to agency proceedings, neither does this Act prohibit such functions by nonlawyers if other law confers permission."

Kansas law does not authorize non-attorney representatives to practice law on behalf of their employing entity. In *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990), the Kansas Supreme Court held that while an individual "may appear in court on his own behalf when he is a named party to pending litigation, he has no right, franchise, or authority to appear for or on behalf of any other person or entity . . . or to assist any such person or entity in any matter requiring legal knowledge and training." 246 Kan. at 691. Thus, a non-attorney may not practice law before the board of tax appeals on behalf of a county, notwithstanding K.S.A. 77-515.

With regard to the representation of taxpayers before the board of tax appeals, clearly taxpayers may represent themselves. See *Williams, supra*. Pursuant to K.S.A. 77-515(a) if the taxpayer is an artificial person it may *participate*, in hearings conducted in accordance with the KAPA, through a duly authorized representative except as precluded by the board. However, a duly authorized representative, other than a licensed attorney, may not engage in the practice of law. An individual taxpayer may participate through an attorney or, "if permitted by law," any other representative. We are aware of no statutes which allow an individual taxpayer to be represented in a hearing before the board of tax appeals by anyone other than the taxpayer personally or an attorney authorized to practice in this state.

We now look to what constitutes the practice of law. Again, *State ex rel. Stephan v. Williams, supra*, is instructive:

"In determining what constitutes the 'practice of law' no precise, all-encompassing definition is advisable, even if it were possible. Every matter asserting the unauthorized practice of law must be considered on its own facts on a case-by-case basis. In *State v. Schumacher*, 214 Kan. 1, 519 P.2d 1116 (1974), we stated:

"Although it may sometimes be articulated more simply, one definition [of "practice of law"] has gained widespread acceptance, and has been adopted by this Court:

"A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836, as follows:

"As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court." *State, ex rel., v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765 (1934).

"The court, in *Perkins*, also pointed out that "[o]ne who confers with clients, advises them as to their legal rights, and then takes the business to an attorney and arranges with him to look after it in court is engaged in the practice of law." 138 Kan. at 908. The quotation from the *Eley* case has been adopted as the general rule in 7 C.J.S., *Attorney and Client*, sec. 3g (1937).

"A more recent source defines the practice of law as "the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent." *R.J. Edwards, Inc. v. Hert*, 504 P.2d 407, 416 (Okla. 1972).

"It is clearly the prerogative of the Supreme Court to define the practices of law:

"It is unnecessary here to explore the limits of judicial power conferred by [Article 3, Sec. 1, of the Kansas Constitution], but suffice it to say that the practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to regulate the practice naturally and logically belongs to the judicial department of the government. (*In re Integration of Nebraska State Bar Ass'n*, 133 Neb. 283, 275 N.W. 265 114 A.L.R. 151.) Included in that power is the supreme court's inherent right to prescribe conditions for admission to the Bar, to define, supervise, regulate and control the practice of law, whether in or out of court, and this is so notwithstanding acts of the legislature in the exercise of its police power to protect the public interest and welfare. (*Martin v. Davis*, 187 Kan. 473, 478-79, 357 P.2d 782 (1960)."

246 Kan. at 689.

You mention direct and cross examination of witnesses, summarizing, presenting and objecting to evidence, making legal arguments and filing pleadings as some of the things that a representative of a taxpayer may be called upon to do in a hearing before the board. These are functions that we believe the courts would consider as the practice of law and therefore can only be performed in this state by an individual or entity representing itself, or by an attorney authorized to practice law in this state. See *State ex rel. Stephan v. Williams*, 246 Kan. 681, 689 (1990); *State ex rel. Fatzer v. Schmitt*, 174 Kan. 581, 588 (1953); 7 Am.Jur.2d *Attorneys at Law*, secs. 101, 107 (1980).

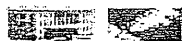
In conclusion, pursuant to K.S.A. 77-515, in board of tax appeals proceedings conducted in accordance with the Kansas administrative procedures act artificial parties such as counties and corporations may participate through a duly authorized representative such as the county appraiser or a corporate officer unless and until the board requires artificial parties to participate by counsel. While a duly authorized representative may participate in the proceedings, a non-attorney representative may not engage in the unauthorized practice of law and therefore may not examine witnesses, file pleadings, make legal arguments, or perform other functions deemed to be the practice of law. Individual taxpayers may represent themselves or be represented by an attorney authorized to practice law in this state, but may not be

represented by anyone else as such would constitute the unauthorized practice of law.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller
Deputy Attorney General



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Effective: March 30, 2012

West's Tennessee Code Annotated Currentness
 Title 67. Taxes and Licenses (Refs & Annos)
 Chapter 5. Property Taxes
 Part 15. Assessment Review--State Board of Equalization
 → § 67-5-1514. Agents and representatives

(a) At, or in connection with, any conference or hearing held pursuant to this part, or pursuant to part 14 of this chapter, taxpayers and assessors of property shall be entitled to the assistance of a qualified agent and of such other persons as they may wish.

(b) At any conference or hearing held pursuant to this part, or with respect to the filing of appeals pursuant to § 67-5-1412, taxpayers and assessors of property may appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family.

(c)(1) The following persons are permitted to act, appear and participate as an agent for the taxpayer:

(A) Attorneys;

(B) With respect to a corporation or other artificial entity, its regular officers, directors or employees;

(C) Where the only issue of an appeal is the valuation of tangible personal property, a certified public accountant; and

(D) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, any person who holds a valid registration issued by the board of equalization.

(2) The board of equalization shall, upon receipt of a registration fee of two hundred dollars (\$200), register as an agent any person who presents satisfactory evidence that the person has:

(A) Not less than four (4) years of experience in real property appraisal and/or assessment valuation; and

(B)(i) Successfully completed not less than one hundred twenty (120) classroom hours of academic instruction in subjects of which the primary substance relates to property appraisal or assessment of property from a col-

lege or university, or from a nationally recognized appraisal or assessment organization approved by the board;

(ii) Passed the examination for Tennessee certified assessor as administered by the board; and

(iii) No person shall be required to meet the additional registration qualifications required by this section if such person has registered or applied for registration prior to June 30, 2002.

(3) The board may, in lieu of the evidence required in subdivision (c)(2), recognize and accept certain professional designations which are awarded by appraisal and/or assessment organizations on the basis of qualifications at least equal to those set forth therein.

(4) The board may charge a reasonable fee, not to exceed fifty dollars (\$50.00), for administration of the examination for Tennessee certified assessor to an applicant for registration under this section.

(5) A corporation engaged in the business of evaluation of property may be registered if its principal officer is registered, but only employees of the corporation who are registered shall be permitted to act as agents for taxpayers. The fee for registration and renewal of registration shall be the same as provided for agents in this subsection (c).

(d) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, then all conferences or hearings shall be conducted in an informal manner.

(e)(1) An assessor of property may delegate duties to be performed under this chapter to any of the assessor's deputies.

(2) The following persons are permitted to represent the assessor of property in any contested case before the state board of equalization:

(A) Attorneys, including attorneys with the division of property assessments;

(B) With respect to the assessor's office, any person designated as deputy assessor;

(C) Where the only issue of an appeal is the valuation of tangible personal property, a certified public accountant, any person that has contracted with that particular county or assessor of property, or both, to review financial information relative to the subject taxpayer's personal property and the tax on the personal property or any person with a personal property designation from any nationally accredited appraisal organization or assessment organization, or both;

(D) Employees of the division of property assessments where the employees have attained any type of designation by the International Association of Assessing Officers or the Tennessee Certified Assessor's Program; and

(E) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, any person who holds a valid registration issued by the board of equalization pursuant to subdivision (c)(2).

(f)(1) The board may reprimand, revoke, or suspend from practice or place on probation or otherwise discipline any agent for any of the acts set forth below:

(A) Procuring or attempting to procure registration pursuant to this part by knowingly making a false statement, submitting false information, or through any form of fraud;

(B) Failing to meet the minimum qualifications established by this section;

(C) Paying money or other valuable consideration, other than as provided for by this section, to any member or employee of the board to procure registration under this section; or

(D) Any act or omission involving dishonesty or fraud that could substantially benefit the registrant or another person or with the intent to substantially injure another person.

(2) The board may adopt additional standards of conduct, if any, regarding all agents when appearing at any conference or hearing pursuant to this section.

(3) There is hereby created within the board a regulatory panel, to consist of six (6) members, each of whom shall serve a two-year term, the members to be selected by the board from among a list of individual agents who are registered with the board and who have been nominated to serve on the panel by individual agents who are registered with the board. The panel may adopt standards of conduct for all agents, which standards then shall be subject to approval by the board. The majority of the panel constitutes a quorum and the affirmative vote of two-thirds (2/3) majority of the panel, or two-thirds (2/3) majority vote of the board upon appeal, is necessary for disciplinary action against any agent.

(4) Upon receipt of a written complaint made against any agent, the executive secretary, if the executive secretary determines that the complaint warrants an investigation, shall notify the agent, and the agent shall file an answer to the complaint with the executive secretary within forty-five (45) days from receipt of notice. Following receipt of the agent's answer to the complaint, the executive secretary shall appoint an administrative judge from the staff of the board who shall investigate the complaint. The administrative judge may dismiss the complaint or determine that a hearing is required. Any such hearing shall be conducted by the panel, and the panel may discipline any agent in any manner provided in this section. Within forty-five (45) days from the date of the pan-

el's disciplinary decision, the disciplined agent may appeal the panel's decision to the board. In the event of such appeal, the members of the board shall conduct a hearing and may confirm or dismiss the panel's disciplinary decision.

(5)(A) All agents' registrations issued by the board under this section shall expire on June 30 of each even-numbered year, and shall be invalid after that date unless renewed. Subject to the provisions of subsection (h), such registrations may be renewed on or before the expiration date by remitting to the board the biennial registration fee of two hundred dollars (\$200).

(B) Subject to the provisions of subsection (h), an agent's registration may be renewed:

(i) On or before the expiration date, by remitting to the board the biennial registration fee of two hundred dollars (\$200);

(ii) Within a period of one (1) year after the expiration date, by remitting to the board the biennial registration fee of two hundred dollars (\$200) plus a late renewal fee of fifty dollars (\$50.00).

(C) Any person whose registration has lapsed for a period of more than one (1) year must reapply for registration.

(g) Any written solicitation of business, by letter, advertisement, or otherwise, by any person other than an attorney, who qualifies as an agent under this section shall contain, in type large enough to be easily readable, a disclaimer substantially as follows: "Taxpayer agents who are not lawyers may only appear on your behalf before the state board of equalization on matters of classification, assessment, and/or valuation, and may not represent you in a court of law."

(h) The agent regulatory panel may adopt and revise standards for continuing education to be imposed as a condition for renewal of an agent's registration under this section, which standards and revisions shall be subject to approval by the board. The board and panel may approve a continuing education program conducted by its staff, and the board may charge agents attending for credit a fee in an amount sufficient to defray the cost of the program.

(i) All other provisions of this section notwithstanding, this section shall not apply in any manner to the representation of a taxpayer by an attorney.

(j) No provision in this section is intended to require that any person must be an attorney, certified public accountant, agent registered with the board, or otherwise in order to act as an agent for a taxpayer before a county board of equalization.

(k) To be eligible for registration under this section, an individual must establish a place of business in this state

or designate an agent for service of legal process who is a resident of this state. The board may waive any registration requirement for an applicant who holds a valid registration certificate or license issued by another state that has requirements for licensing or registration of property taxpayer agents that are at least equal to the requirements of this state. An applicant for reciprocity shall apply in the same manner as any other applicant and shall furnish the board with documents and other evidence substantiating the applicant's qualifications as required by the board.

CREDIT(S)

1988 Pub.Acts, c. 619, §§ 1, 2; 1990 Pub.Acts, c. 807, § 1; 1992 Pub.Acts, c. 1024, §§ 3 to 6; 1998 Pub.Acts, c. 697, §§ 1 to 4, eff. July 1, 1998; 1998 Pub.Acts, c. 1066, § 6, eff. May 19, 1998; 2002 Pub.Acts, c. 753, §§ 1 to 3, eff. June 30, 2002; 2009 Pub.Acts, c. 256, § 2, eff. May 20, 2009; 2012 Pub.Acts, c. 638, § 1, eff. March 30, 2012.

HISTORICAL AND STATUTORY NOTES

2002 Pub.Acts, c. 753, § 1, in subsec. (c)(2)(B)(i), substituted "whose primary substance relates to" for "related to" following "academic instruction in subjects" and substituted "and" for "or" following "organization approved by the board;"

2002 Pub.Acts, c. 753, § 2, added subsec. (c)(2)(B)(iii), relating to applicability of additional registration requirements.

2002 Pub.Acts, c. 753, § 3, added subsec. (k), relating to eligibility for registration under this section.

2009 Pub.Acts, c. 256, § 2, redesignated former subsec. (e) as (e)(1); and added subsec. (e)(2), relating to persons permitted to represent the assessor of property.

2009 Pub.Acts, c. 256, § 3, provides:

"SECTION 3. This act shall take effect upon becoming a law and shall apply to any and all appeals currently pending before the state board of equalization, the public welfare requiring it."

2012 Pub.Acts, c. 638, § 1, in subsec. (h), added "The board and panel may approve a continuing education program conducted by its staff, and the board may charge agents attending for credit a fee in an amount sufficient to defray the cost of the program."

CROSS REFERENCES

Back assessments and reassessments, duty to make, appeal by aggrieved person, assistance or representa-

tion in appeal, see § 67-1-1005.

Real estate appraisers, exemption from regulation for persons registered with state board of equalization, see § 62-39-104.

ADMINISTRATIVE CODE REFERENCES

Agent registration program, see Tenn. Rules and Regulations 0600-06-.01 et seq.


LIBRARY REFERENCES

Taxation  2676.
Westlaw Topic No. 371.

NOTES OF DECISIONS

In general 1

1. In general

Statute permitting taxpayers contesting assessment of their property before boards of equalization to be represented by nonattorney agents did not sanction "unauthorized practice of law," as representing taxpayers at such proceedings before boards of equalization and their subsequent administrative appeals did not require legal training, skill or judgment. West's Tenn.Code, § 67-5-1514. Petition of Burson, 1995, 909 S.W.2d 768. Attorney And Client  12(18)

The State Board of Equalization in accordance with § 67-5-1514(f)(2) and (3) may adopt standards of conduct that apply only to agents registered with the Board under § 67-5-1514(c), and which do not apply to the other persons permitted by § 67-5-1514(c)(1) and (2) to appear as agents before the Board. The application of such standards only to registered agents would not violate any provisions of the Tennessee Code or the Tennessee or United States Constitutions. Op.Atty.Gen. No. 97-119, Sept. 2, 1997, 1997 WL 654223.

T. C. A. § 67-5-1514, TN ST § 67-5-1514

Current through end of 2013 First Reg. Sess.

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END OF DOCUMENT

RULES
OF
STATE BOARD OF EQUALIZATION

CHAPTER 0600-06
AGENT REGISTRATION PROGRAM

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0600-06-.01 PURPOSE.

The purpose of these rules is implementation of the provisions of T.C.A. §67—5—1514 concerning registration and regulation of agents conducting assessment appeals for property tax purposes on behalf of others before the boards of equalization.

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998.

0600-06-.02 DEFINITIONS.

- (1) "Act" or "Agent registration act" means the law codified as T.C.A. §67—5—15 14.
- (2) "Board" means the Tennessee State Board of Equalization.
- (3) "Panel" means the taxpayer agent regulatory panel created by the Act.
- (4) "Rules" mean the rules promulgated in this chapter.

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998.

0600-06-.03 PROCESSING AND CONSIDERATION OF AGENT REGISTRATIONS. The following procedures shall apply to registration of taxpayer agents under T.C.A. §67—5—1514:

- (1) Applications. Applicants for registration shall submit an application on a form approved by the state board specifying whether they claim qualification by attainment of the program education and experience requirements, or by attainment of a recognized professional appraisal designation. Applications for renewal of registration shall be filed biannually on the approved form on or before June 30.
- (2) Application fees. Applications for initial registration shall be accompanied by a registration fee in the amount provided by law. Applications for annual renewal of registration shall be accompanied by a renewal fee in the amount provided by law. Fees shall be paid by bank draft or money order in U.S. funds. Cash will not be accepted.
- (3) Applications - accompanying information
 - (a) Applicants by professional appraisal designation. Applicants for approval based on attainment of a professional appraisal designation shall include in their application, identification of the claimed designation, the designating organization, and any

(Rule 0600-06-.03, continued)

numbers or symbols used by the organization in identifying the applicant as a designee. The designation must be currently approved by the board and the applicant must maintain the designation throughout the renewal year for which application is made, which is the period beginning July 1 of the tax year for which the agency is exercised and extending until June 30 of the following year.

(b) Applicants by education and experience. Applicants for approval based on education and experience shall meet the following criteria:

1. Experience. Applicants shall identify the period of time for which experience is claimed, the companies for which the applicant was employed or the business names under which the applicant obtained relevant experience, the nature of work performed, samples of appraisal or assessment work, and the names of persons supervising the applicant's appraisal or assessment work or otherwise familiar with the applicant's appraisal or assessment work.

The applicant shall provide such additional evidence as may be reasonably required by the Board staff to verify experience consistent with the statutory standard.

2. Education. Applicants shall submit an official transcript from colleges or universities attended, identifying thereupon courses of instruction, credit hours, and course grades for which education credit is claimed. Where credit is claimed for courses from an approved assessment or appraisal organization, the applicant shall identify the course names and organizations, and provide with the application certificates of completion, pass/fail forms, grade report forms, or letters noting the applicant's successful completion of the courses. from the organizations which provided the courses. Upon request, the applicant shall provide such additional information as may reasonably be required to permit evaluation of courses against the statutory standard.
3. T.C.A. Exam. The applicant shall also present evidence of successful completion of the comprehensive examination required of candidates for the Tennessee Certified Assessor designation. Applicants may take the examination whether or not they meet other prerequisites for the T.C.A. designation, but the designation itself shall be awarded only upon attainment of all prerequisites otherwise provided.

(c) Review of applications. Registration staff shall review all applications against the criteria provided by law.

(d) Denial of registration - disciplinary action. Registration or renewal of registration may be denied any applicant who fails to meet the statutory criteria or who fails as an applicant by designation to present evidence of a current recognized designation. Registration shall be revoked if the registrant ceases to qualify under the approval criteria. Registration may be revoked or suspended, or a reprimand issued in the discretion of the board or panel, if the registrant commits any disciplinary offense specified in the registration law, or for violation of any standard of conduct approved by the board or panel. In determining whether to impose revocation or a lesser discipline, the board or panel will consider the willfulness of the offense, previous related offenses, and the extent of harm to the public or the appeals process.

Disciplinary action shall occur only after written notice to the registrant specifying the reasons and after an opportunity has been given to the registrant to be heard. Disciplinary actions shall be appealable in the manner provided in the agent registration act.

(Rule 0600-06-.03, continued)

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998. Amendments filed February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee filed a 15-day stay of the rules; new effective date May 17, 2011.

0600-06-.04 MAINTENANCE OF REGISTRATION.

- (1) All registrants shall promptly report any change of address to the board.
- (2) All registrants who are not residents of Tennessee must establish an agent for service of legal process with a resident of this state.
- (3) All registrants shall notify service recipients of the fact of their registration with the board and the address of the board. This requirement may be met by inclusion of the following printed or stamped text on any contract or authorization for agent services involving property in Tennessee: "This agent is registered as a qualified property tax assessment appeals agent by the Tennessee State Board of Equalization (615/741-4883)".
- (4) Client records shall be maintained for not less than three years following the date last action was taken or service performed on behalf of the client. Continuing education records shall be maintained for a period of at least three years.

Authority: T.C.A. §67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998.

0600-06-.05 RECOGNITION OF PROFESSIONAL APPRAISAL DESIGNATIONS.

- (1) Form of requests. Requests for recognition of a professional appraisal designation must be submitted by the organization which bestows the designation through its authorized officers, directors, or employees. Requests shall contain the following information:
 - (a) Organization name, address of principal office and office where records are maintained, names of principal officers and administrative officials.
 - (b) Copy of current organization charter, by-laws, rules and other documents setting forth the purposes, structure, and governance of the organization.
 - (c) Name and description of professional appraisal designations for which recognition is sought, including detailed description of the standards which must be met for initial qualification or continuing designation.
 - (d) Description of organizational policies and procedures designed to ensure that only qualified persons receive designations.
 - (e) Such additional or supporting information as staff may reasonably require to complete review of the request.
- (2) Notice of action. Review staff shall advise the organization if additional information is needed and shall advise the organization in writing whether the request is approved or denied. Denials shall specify reasons for the action.
- (3) Criteria for review. Recognition shall be granted upon a finding that (a) the organization exists in good faith for the purpose of promoting and improving appraisal and valuation; (b) the designation for which recognition is sought is a professional appraisal designation which is bestowed only upon persons who meet qualifications which match or exceed the education

(Rule 0600-06-.05, continued)

and experience requirements for agent qualification provided by law; and (c) the organization has and applies policies and procedures which insure that only persons who meet the qualifications in fact are allowed to obtain and retain the professional designation.

- (4) Denial or revocation. Designations may be denied for cause and designations previously approved for recognition may be revoked upon finding that the organization no longer meets the criteria for approval set forth above. The organization shall be given written notice specifying reasons for the action, and may request the board to review the decision.

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998.

0600-06-.06 STANDARDS OF CONDUCT. Registrants shall certify that they have read and submit to the following standards of conduct:

- (1) An agent shall not participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the act or rules.
- (2) An agent shall not directly or indirectly or in any manner whatsoever lend his/her registration or identification to any person, firm or corporation for the purpose of evading any provision of the act or rules.
- (3) An agent shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the act or rules.
- (4) An agent shall not engage in any activity that constitutes dishonesty, fraud, gross incompetence or gross neglect of a client's affairs while acting as an agent.
- (5) An agent shall promptly report to the board any known violation of the act or rules.
- (6) An agent shall cooperate fully with the board, panel or staff in the investigation of an alleged violation of the act or rules.
- (7) An agent shall not offer or promise anything of value with the intent of inducing a person who is performing a public duty to perform or fail to perform any act related to such public duty.
- (8) An agent shall not contract for or accept compensation or anything of value for services not performed.
- (9) An agent shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation.
- (10) An agent shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, prospective client or employer or to a public agency or representative of a public agency.
- (11) An agent shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law.
- (12) An agent shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent.
- (13) An agent shall not represent a client whose interests are in conflict with those of another client in the same proceeding.

(Rule 0600-06-.06, continued)

- (14) An agent shall not solicit or advertise his/her services as an agent by claiming a specific result or stating a conclusion regarding such services without prior analysis of the facts and circumstances pertaining thereto.
- (15) An agent shall not assert or maintain a claim he/she knows or discovers to be false or without a reasonable foundation in law and fact.
- (16) An agent shall not knowingly engage in *ex parte* communications as defined in the Uniform Administrative Procedures Act.

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule May 11, 1998; effective July 25, 1998.

0600-06-.07 RECIPROCITY. An applicant may qualify by reciprocity in the manner permitted by Tenn. Code Ann. §67-5-1514(k). Suspension or revocation of registration due to nonqualification shall be subject to appeal in the manner provided in §67-5-1514(f) and these rules.

Authority: 67-1-305 and 67-5-1514. **Administrative History:** Original rule filed February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee filed a 15-day stay of the rule; new effective date May 17, 2011.

0600-06-.08 CONTINUING EDUCATION. As a prerequisite to renewal of an agent registration the agent shall present evidence satisfactory to the Board of having obtained, during the renewal period, education consisting of at least twenty (20) classroom hours of instruction approved by the Panel and the Board. Courses for which continuing education credit is recognized by the Tennessee Real Estate Appraiser Commission shall qualify for credit under this rule. Suspension or revocation of registration due to noncompliance with this rule shall be subject to appeal in the manner provided in §67-5-1514(f) and these rules.

Authority: T.C.A. §§67-1-305 and 67-5-1514. **Administrative History:** Original rule filed February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee filed a 15-day stay of the rules; new effective date May 17, 2011.

PROPERTY TAX CONSULTANTS
 Occupations Code
 Title 7. Practices and Professions Related to Real Property and Housing
 Chapter 1152
 Administered by the Texas Department of Licensing and Regulation
(Effective September 1, 2009, except where noted)

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1152.001. Definitions

In this chapter:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (3) "Department" means the Texas Department of Licensing and Regulation.
- (3-a) "Executive director" means the executive director of the department.
- (4) "Person" means an individual, partnership, corporation, or association.
- (5) "Property tax consultant" means a person who performs or supervises another person in the performance of property tax consulting services for compensation.
- (6) "Property tax consulting services" means:
 - (A) preparing for another person a rendition statement or property report under Chapter 22, Tax Code;
 - (B) representing another person in a protest under Subchapter C, Chapter 41, Tax Code;
 - (C) consulting or advising another person concerning:
 - (i) the preparation of a rendition statement or property report under Chapter 22, Tax Code; or
 - (ii) an action the other person may protest under Subchapter C, Chapter 41, Tax Code;
 - (D) negotiating or entering into an agreement with an appraisal district on behalf of another person concerning an action that is or may be the subject of a protest under Subchapter C, Chapter 41, Tax Code; or
 - (E) acting as the agent of a property owner designated in accordance with Section 1.111, Tax Code.
- (7) "Registrant" means a person who is registered as a property tax consultant or a senior property tax consultant under this chapter.

Sec. 1152.002. Exemptions from Registration

- (a) A person is not required to be registered under this chapter if the person:
 - (1) is acting under a general power of attorney, unless the person represents that the person is a property tax consultant, agent, advisor, or representative;
 - (2) is licensed to practice law in this state;
 - (3) is an employee of a property owner or of an affiliated or subsidiary company of a property owner and performs property tax consulting services for:
 - (A) the property owner; or

- (B) a partnership, joint venture, or corporation in which the property owner owns an interest;
- (4) is a lessee of a property owner and is designated as the agent of the owner in accordance with Section 1.111, Tax Code;
- (5) is a public employee or officer and assists a property owner in the course of the employee's or officer's duties;
- (6) is a certified public accountant under Chapter 901;
- (7) assists another person in the performance of property tax consulting services or provides testimony on behalf of the other person at a protest hearing under Subchapter C, Chapter 41, Tax Code; or
- (8) provides property tax consulting services only in connection with farms, ranches, or single-family residences and:
 - (A) holds an active real estate broker license or an active real estate salesperson license under Chapter 1101; or
 - (B) is a licensed real estate appraiser or certified real estate appraiser under Chapter 1103.
- (b) A person described by Subsection (a)(7) is not exempt from the registration requirements of this chapter if:
 - (1) the person is designated as the agent of the other person under Section 1.111, Tax Code; or
 - (2) more than 50 percent of the person's employment time is devoted to, or more than 50 percent of the person's income is derived from, performing or supervising the performance of property tax consulting services.

SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, AND DEPARTMENT

Sec. 1152.051. Standards of Conduct for Registrants

The commission by rule shall establish standards of practice, conduct, and ethics for registrants.

Sec. 1152.052. Money Received by Department

The department shall receive and account for all money derived under this chapter.

Sec. 1152.053. Fee Increase

- (a) The fee for the registration of a person under this chapter and the fee for the renewal of a registration under this chapter is increased by \$200.
- (b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

SUBCHAPTER C. PROPERTY TAX CONSULTANTS ADVISORY COUNCIL

Sec. 1152.101. Definition

In this subchapter, "council" means the Property Tax Consultants Advisory Council.

Sec. 1152.102. Council Membership

- (a) The council is composed of seven members appointed by the presiding officer of the commission, with the commission's approval.
- (b) The presiding officer of the commission may appoint not more than two members who are qualified for an exemption under Section 1152.002(a)(3).
- (c) Except as provided by Subsection (d), each person appointed for membership on the council must:
 - (1) be a registered senior property tax consultant;
 - (2) be a member of a nonprofit and voluntary trade association:
 - (A) whose membership consists primarily of persons who perform property tax consulting services in this state or who engage in property tax management in this state for other persons;
 - (B) that has written experience and examination requirements for membership; and
 - (C) that subscribes to a code of professional conduct or ethics;
 - (3) be a resident of this state for the five years preceding the date of the appointment; and
 - (4) have performed or supervised the performance of property tax consulting services as the person's primary occupation continuously for the five years preceding the date of the appointment.
- (d) One member of the council must be a public member.

NOTE: ACTS 2009, 81st LEG., HB 2548, Section 8 reads:

The presiding officer of the Texas Commission of Licensing and Regulation shall appoint the public members of the advisory bodies to the Texas Department of Licensing and Regulation, as required by this Act, not later than December 1, 2009.

Sec. 1152.103. Membership Restrictions *(amended effective 6/19/09 per House Bill 2447, 81st Legislature)*

A person is not eligible for appointment as a member of the council if the person is:

- (1) required to register with the secretary of state under Chapter 305, Government Code;
- (2) required to register with the department under Chapter 1151; or
- (3) exempt from the registration requirements imposed by this chapter, except as provided by Section 1152.102.

Sec. 1152.104. Terms; Vacancy

- (a) Members of the council serve staggered three-year terms, with the terms of two members expiring on February 1 of each year.
- (b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

Sec. 1152.105. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

Sec. 1152.106. Meetings; Vote Required for Action

- (a) The council shall meet at least semiannually at the call of the presiding officer or at the call of a majority of its members.
- (b) A decision of the council is not effective unless it receives the affirmative vote of at least four members.

Sec. 1152.107. Compensation; Reimbursement

A council member is not entitled to receive compensation for serving as a member. A council member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member, subject to applicable limitations in the General Appropriations Act.

Sec. 1152.108. Council Powers

The council shall:

- (1) recommend to the commission standards of practice, conduct, and ethics for registrants to be adopted under this chapter;
- (2) recommend to the commission amounts for the fees it may set under this chapter;
- (3) recommend to the commission contents for the senior property tax consultant registration examination and standards of acceptable performance;
- (4) assist and advise the commission in recognizing continuing education programs and educational courses for registrants; and
- (5) advise the commission in establishing educational requirements for initial applicants.

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 1152.151. Registration Required

- (a) A person may not perform property tax consulting services for compensation unless the person holds a certificate of registration issued under this chapter.
- (b) A person may not represent that a person is a registered property tax consultant, agent, advisor, or representative unless the person is a registrant.

Sec. 1152.152. Association With Senior Property Tax Consultant Required

- (a) A registered property tax consultant may not perform property tax consulting services for compensation unless the person is employed by or associated with and acting for:
 - (1) a registered senior property tax consultant; or
 - (2) an attorney who is licensed to practice law in this state and who has successfully completed the senior property tax consultant registration examination required under Section 1152.160.
- (b) Subsection (a) does not apply to a person who is registered under Section 1152.156(a)(2) or 1152.158.

Sec. 1152.153. Voluntary Registration

- (a) A person who is not required to hold a certificate of registration under this chapter may register if the person satisfies the registration requirements of this chapter.
- (b) A person exempt from the registration requirements of this chapter who elects to register is subject to this chapter.

Sec. 1152.154. Registration Application; Fees

- (a) An applicant for registration must file an application with the department on a printed form prescribed by the executive director.
- (b) The application must be accompanied by:
 - (1) a nonrefundable application fee; and
 - (2) a registration fee.
- (c) The department shall refund the registration fee if the executive director does not approve the application.

Sec. 1152.155. General Eligibility for Registration

- (a) To be eligible for registration, an applicant must:
 - (1) be at least 18 years of age;
 - (2) hold a high school diploma or its equivalent;
 - (3) pay the fees required by the commission;
 - (4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of process; and
 - (5) meet any additional qualifications required by this chapter or by the commission under this chapter or Chapter 51.
- (b) Notwithstanding Subsection (a), a person is eligible for registration if the person holds:
 - (1) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or
 - (2) an active real estate appraiser license or certificate under Chapter 1103.

Sec. 1152.156. Eligibility to Register as Property Tax Consultant

- (a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:
 - (1) complete at least 40 classroom hours of educational courses approved by the executive director, including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services and pass a competency examination under Section 1152.160; or
 - (2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

- (b) The executive director may give appropriate credit to an initial applicant for:
- (1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and
 - (2) educational programs or courses completed by the applicant on:
 - (A) property taxation;
 - (B) the property tax system;
 - (C) property tax administration;
 - (D) ethical standards; or
 - (E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

NOTE: ACTS 2009, 81st LEG., HB 2249, Section 5 reads:

The change in law made by this Act to Section 1152.156(a), Occupations Code, applies only to an application for registration as a property tax consultant that is submitted to the Texas Department of Licensing and Regulation on or after March 1, 2010. An application for registration submitted before that date is governed by the law in effect at the time the application was submitted, and the former law is continued in effect for that purpose.

Sec. 1152.157. Eligibility to Register as Senior Property Tax Consultant

In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a senior property tax consultant must:

- (1) acquire at least 25 credits as provided by Section 1152.159;
- (2) have performed or supervised the performance of property tax consulting services as the applicant's primary occupation for at least four of the seven years preceding the date of application; and
- (3) pass the examination adopted under Section 1152.160 or hold a professional designation in property taxation granted by a nonprofit and voluntary trade association, institute, or organization:
 - (A) whose membership consists primarily of persons who represent property owners in property tax and transactional tax matters;
 - (B) that has written experience and examination requirements for granting the designation; and
 - (C) that subscribes to a code of professional conduct or ethics.

Sec. 1152.158. Registration of Certain Real Estate Brokers

Sections 1152.156 and 1152.157 do not apply to a person who:

- (1) applied for registration before March 1, 1992;
- (2) on the date of application held an active real estate broker license under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as that law existed on the application date; and

- (3) does not perform or supervise the performance of property tax consulting services for compensation in connection with personal property.

Sec. 1152.159. Credits for Senior Property Tax Consultant Applicants

- (a) The executive director shall grant credit to an applicant for registration as a senior property tax consultant as follows:
 - (1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;
 - (2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and
 - (3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.
- (b) The executive director may grant additional credits to an applicant for registration as a senior property tax consultant for:
 - (1) successful completion of educational programs or courses on:
 - (A) property taxation;
 - (B) the property tax system;
 - (C) property tax administration;
 - (D) ethical standards; or
 - (E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;
 - (2) completion of other educational programs or courses; or
 - (3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional designations obtained from recognized associations, institutes, or organizations.
- (c) The executive director may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the executive director shall consider:
 - (1) the nature of the program or course;
 - (2) the number of actual instructional hours in the program or course;
 - (3) whether an examination is required for successful completion of the program or course; and
 - (4) other factors the executive director determines appropriate.

Sec. 1152.160. Registration Examinations

- (a) The executive director shall:

- (1) adopt an examination for registration as a senior property tax consultant;
 - (2) adopt an examination for registration as a property tax consultant; and
 - (3) establish the standards for passing the examinations.
- (b) The department shall offer the examinations at times and places designated by the executive director.
- (c) To be eligible to take an examination, an applicant must pay to the department an examination fee.
- (d) The examination must test the applicant's knowledge of:
- (1) property taxation;
 - (2) the property tax system;
 - (3) property tax administration;
 - (4) ethical standards; and
 - (5) general principles of appraisal, accounting, and law as they relate to property tax consulting services.
- (e) An attorney who is licensed to practice law in this state may take the senior property tax consultant registration examination under this section without completing any other eligibility requirements for registration as a senior property tax consultant under this chapter.
- (f) The department shall accept, develop, or contract for the examinations required by this section, including the administration of the examination.

Sec. 1152.162. Issuance of Certificate of Registration

- (a) The executive director shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.
- (b) The executive director shall issue to an applicant who qualifies for registration the appropriate certificate of registration.

SUBCHAPTER E. RENEWAL OF CERTIFICATE OF REGISTRATION

Sec. 1152.201. Term of Certificate of Registration

Except as otherwise provided by the commission, a certificate of registration expires on the first anniversary of the date of issuance.

Sec. 1152.202. Procedure for Renewal

The executive director shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee.

Sec. 1152.204. Recognition of Educational Programs and Courses

- (a) The commission by rule shall recognize appropriate continuing education programs for registrants.

- (b) The commission shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:
- (1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and
 - (2) completed by a registrant who also holds:
 - (A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or
 - (B) an active real estate appraiser license or certificate under Chapter 1103.
- (c) The commission may recognize an educational program or course:
- (1) related to property tax consulting services; and
 - (2) offered or sponsored by a public provider or a recognized private provider, including:
 - (A) the comptroller;
 - (B) the State Bar of Texas;
 - (C) the Texas Real Estate Commission;
 - (D) an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board; or
 - (E) a nonprofit and voluntary trade association, institute, or organization:
 - (i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;
 - (ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and
 - (iii) that subscribes to a code of professional conduct or ethics.
- (d) The commission may recognize a private provider of an educational program or course if the provider:
- (1) applies to the department on a printed form prescribed by the executive director; and
 - (2) pays in the amounts set by the commission:
 - (A) a nonrefundable application fee; and
 - (B) an educational provider's fee.
- (e) The department shall refund the educational provider's fee if the commission does not recognize the provider's educational program or course.

SUBCHAPTER E-1. PROHIBITED ACTS

NOTE: ACTS 2009, 81st LEG., HB 2591, Section 6(b) reads:

- (b) *Subchapter E-1, Chapter 1152, Occupations Code, as added by this Act, takes effect January 1, 2010.*

Sec. 1152.231. General Prohibited Acts.

- (a) A person required to register under this chapter may not serve as a registered senior property tax consultant for more than 10 registered property tax consultants unless each additional tax consultant sponsored or supervised by the registered senior property tax consultant has for the previous six months:
 - (1) been employed and engaged as a tax consultant on a full-time basis;
 - (2) performed tax consultant related services as an employee of a property owner; or
 - (3) performed licensed appraisal services.
- (b) Except for protests filed with the approval of a lessee under Section 41.413, Tax Code, a person required to register under this chapter may not file a protest under Chapter 41, Tax Code, without the approval of the property owner.
- (c) A person required to register under this chapter may not falsify an agent appointment, exemption application, protest, or other legal document that is filed with or presented to an appraisal district, an appraisal review board, or a taxing unit.
- (d) A person required to register under this chapter may not file a motion or protest concerning residential property on behalf of a person whom the registrant does not represent unless the registrant has authorization from:
 - (1) that person; or
 - (2) another person, other than the agent or the firm that employs the agent, who is authorized by the person to designate agents under Section 1.111, Tax Code.

Sec. 1152.232. Prohibited Acts: Solicitation of Business.

A person required to register under this chapter may not solicit a property tax consulting assignment by assuring a specific outcome.

Sec. 1152.233. Prohibited Acts: Use of Internet Website.

- (a) A person required to register under this chapter may not maintain an Internet website for any purpose associated with the provision of tax consulting services by the registrant that has a domain name or other Internet address that implies that the website is a government website.
- (b) A person required to register under this chapter may not use or maintain an Internet website for the purpose of soliciting clients if the website does not identify the company prominently on the home page of the website.

Sec. 1152.234. Prohibited Acts: Certain Legal Actions.

A person required to register under this chapter may not engage the services of an attorney for purposes of filing an appeal under Chapter 42, Tax Code, without the prior consent of the client.

SUBCHAPTER F. PENALTIES AND ENFORCEMENT

Sec. 1152.251. Disciplinary Powers of Commission

After a hearing, the commission may deny a certificate of registration and may impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

- (1) a violation of this chapter or a rule applicable to the registrant adopted by the commission under this chapter;
- (2) gross incompetency in the performance of property tax consulting services;
- (3) dishonesty or fraud committed while performing property tax consulting services; or
- (4) a violation of the standards of ethics adopted by the commission.

Sec. 1152.252. Criminal Penalties

- (a) A person required to be registered under this chapter commits an offense if the person:
 - (1) is not registered under this chapter; and
 - (2) performs or offers to perform property tax consulting services for compensation.
- (b) A person commits an offense if the person:
 - (1) knows that a person required to be registered under this chapter is not registered; and
 - (2) represents that the person required to be registered is a property tax consultant, agent, counselor, advisor, or representative.
- (c) An offense under this section is a Class B misdemeanor.

NOTE: ACTS 2009, 81ST LEG., HB 2249, Sections 4, 5, and 6 read:

Section 4. Not later than December 31, 2009, the executive director of the Texas Commission of Licensing and Regulation shall accept, develop, or contract for the property tax consultant examination required by Section 1152.160, Occupations Code, as amended by this Act.

Section 5. The change in law made by this Act to Section 1152.156(a), Occupations Code, applies only to an application for registration as a property tax consultant that is submitted to the Texas Department of Licensing and Regulation on or after March 1, 2010. An application for registration submitted before that date is governed by the law in effect at the time the application was submitted, and the former law is continued in effect for that purpose.

Section 6.

- (a) *Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.*
- (b) *Subchapter E-1, Chapter 1152, Occupations Code, as added by this Act, takes effect January 1, 2010.*

NOTE: ACTS 2009, 81ST LEG., HB 2548, Section 8 reads:

The presiding officer of the Texas Commission of Licensing and Regulation shall appoint the public members of the advisory bodies to the Texas Department of Licensing and Regulation, as required by this Act, not later than December 1, 2009.

REGISTRATION OF PROPERTY TAX CONSULTANTS

*Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 66*

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66.1. Authority. *(Amended effective February 1, 2006, 31 TexReg 487)*

These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 1152.

66.10. Definitions. *(Amended effective November 11, 1992, 17 TexReg 7661; amended effective February 21, 1995, 20 TexReg 890; amended effective October 1, 1995, 20 TexReg 7279; amended effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Act**—Texas Occupations Code, Chapter 1152.
 - (2) **Private Provider**—An educational institution that is established, conducted, and primarily supported by a nongovernmental person, as defined by Texas Occupations Code, Chapter 1152, which meets program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board, and which offers an educational program or course for pre-registration credit or for upgrade credit towards a senior property tax consultant registration. The term does not include a continuing education provider as defined in Chapter 59 of this title.
 - (3) **Professional Designation** — The designation of Certified Member of the Institute (CMI) conferred by the Institute for Professionals in Taxation or another designation recognized by the department.
 - (4) **Real estate property tax consultant**—An individual who has registered under Texas Occupations Code, §1152.155(b) or §1152.158.
 - (5) **Senior property tax consultant**—A registered property tax consultant who has met the additional requirements of Texas Occupations Code, Chapter 1152, and these rules.
- 66.20. Registration Requirements.** *(Amended effective February 21, 1995, 20 TexReg 890; amended effective September 1, 2003, 28 TexReg 7363; amended effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984; amended effective January 11, 2010, 35 TexReg 232)*
- (a) To register or renew a registration, a person must file a completed application on a form provided by the department and pay the applicable fees.
 - (b) An applicant for a senior property tax consultant registration must pass a department-approved examination for senior property tax consultants. The standard for passing the senior property tax consultant examination shall be a score of at least 70%.
 - (c) An applicant for a property tax consultant registration must pass a department-approved examination for property tax consultants. The standard for passing the property tax consultant examination shall be a score of at least 70%.
 - (d) To be eligible for an original property tax consultant registration, a person must successfully complete at least 40 classroom hours of education including:
 - (1) eight hours on the laws and rules relating to property tax consulting;
 - (2) sixteen hours on appraisal and valuation;
 - (3) eight hours on property tax consulting; and

- (4) eight hours on ethics.

66.21. Pre-registration and Upgrade Education. *(New rule effective February 1, 2006, 31 TexReg 487)*

- (a) A private provider must be recognized by the department to offer educational programs or courses for pre-registration or upgrade credit.
- (b) To be recognized as a private provider, a person must:
 - (1) file a completed application on a form provided by the department;
 - (2) pay the applicable fees;
 - (3) satisfy the department as to the person's ability to administer with honesty, trustworthiness, and integrity educational programs or courses approved by the department; and
 - (4) provide satisfactory proof that the person is registered with or exempted by the Texas Workforce Commission under Title 40, Texas Administrative Code, Chapter 807, Career Schools and Colleges.
- (c) Each educational program or course offered by a private provider must be approved by the department before being offered for pre-registration or upgrade credit.
- (d) To obtain department approval for an educational program or course, or in the event of changes to a previously-approved program or course, a private provider must:
 - (1) submit to the department for evaluation an instructor's manual for the program or course, including:
 - (A) course description;
 - (B) learning objectives;
 - (C) evaluating techniques;
 - (D) outline of the subject matter;
 - (E) instructional strategies;
 - (F) course participant handouts; and
 - (G) bibliography or source of update subject matter; and
 - (2) satisfy the department that the subject matter of the program or course is appropriate for the education of property tax consultants and is current and accurate.
- (e) Each educational program or course shall be reviewed annually.
- (f) The executive director may recognize any appropriate program or course that is currently approved by a department or agency of the State of Texas.

66.22. Examination--Licensed Attorney. *(New rule effective October 15, 2007, 32 TexReg 7261)*

- (a) An attorney who is licensed to practice law in this state may take the senior property tax consultant

examination, if the attorney:

- (1) files an application on a form provided by the department; and
 - (2) pays the applicable examination fee.
- (b) An attorney who takes the examination under this section is not required to complete any other eligibility requirements for registration as a senior property tax consultant, including:
- (1) applying for registration as a senior property tax consultant;
 - (2) paying the fee for a senior property tax consultant registration; or
 - (3) meeting the education, experience, and other requirements of Texas Occupations Code, §1152.155 and §1152.157.
- (c) The standard for passing the senior property tax consultant examination shall be the same as under §66.20.

66.23. Registration--Endorsement. *(New rule effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984)*

- (a) The department may waive any prerequisite to registration if the department determines that the applicant holds a license or registration issued by another jurisdiction that has requirements substantially equivalent to those of Texas. It is the responsibility of the applicant to furnish evidence substantiating the applicant's qualifications.
- (b) The department will determine on the basis of the requirements for registration in another state whether the applicant qualifies for a property tax consultant registration or a senior property tax consultant registration.
- (c) It is the applicant's responsibility to obtain certification of the registration issued by another state.
- (d) If not a resident of this state, the applicant must establish an agent for service of legal process with a resident of this state.

66.25. Continuing Education. *(New rule effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984)*

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a registration, a registrant must complete 12 hours of continuing education in courses approved or recognized by the department. Except as provided in Texas Occupations Code, §1152.204(b), the continuing education hours must include the following:
 - (1) three hours of instruction in Texas state law and rules that regulate the conduct of registrants;
 - (2) one hour of instruction in ethics;
 - (3) four hours of instruction in appraisal; and
 - (4) four hours of instruction in property tax consulting.
- (c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within

the one year period immediately prior to the date of renewal.

- (d) A registrant may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.
- (e) A registrant shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.
- (f) To be approved under Chapter 59 of this title, a continuing education provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b) of this section, and the continuing education provider must be registered under Chapter 59 of this title.
- (g) A continuing education course recognized by the department under Texas Occupations Code, §1152.204(b) is not required to be approved under Chapter 59 of this title, and the provider of such a course is not required to be registered under Chapter 59 of this title.
- (h) Except as provided in subsection (i) of this section, this section shall apply to continuing education providers and courses for registrants upon the effective date of this section.
- (i) A continuing education provider that was approved by the department before the effective date of this section may continue to offer for credit continuing education courses that were approved by the department before the effective date of this section, until December 31, 2006.

66.65. Advisory Council. *(Effective January 7, 1994, 18 TexReg 9928; amended effective February 21, 1995, 20 TexReg 890; amended effective October 1, 1995, 20 TexReg 20 7279; amended effective February 1, 2006, 31 TexReg 487)*

- (a) The purpose of the Property Tax Consultants Advisory Council is to advise the commission on standards of practice, conduct, and ethics for registrants, fees, examination contents, and standards of performance for senior property tax consultant examinations, recognition of continuing educational programs and courses, and establishing educational requirements for initial applicants.
- (b) Recommendations of the council will be transmitted to the commission through the executive director.
- (c) Council meetings are called by the presiding officer or at the call of a majority of its members or the executive director.
- (d) Expenses reimbursed to council members shall be limited to authorized expenses incurred while on council business and traveling to and from council meetings. The least expensive method of travel should be used. Expenses can be reimbursed to council members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.
- (e) Expenses paid to council members shall be limited to those allowed by the State of Texas Travel Allowance Guide and Texas Department of Licensing and Regulation policies governing travel allowances for employees.

66.70. Responsibilities of Registrant--General. *(Amended effective amended effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984; amended effective October 15, 2007, 32 TexReg 7261)*

- (a) A registrant may not allow an employee or associate to perform property tax consulting services without first obtaining registration.
- (b) A registrant shall list the following information on all written contracts: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints."

- (c) All registrants shall report any change of address to the department within 30 days after the change.
- (d) Individuals who are registered under Texas Occupations Code, §1152.158 may not perform property tax consulting services for compensation in connection with a property that is not real property.
- (e) A registered property tax consultant must be either:
 - (1) employed by or have an association with a registered senior property tax consultant and be under the direct supervision of the senior property tax consultant, and there must be a legitimate employee/employer relationship or business association established; or
 - (2) employed by or associated with and acting for an attorney who is licensed to practice law in this state and who has successfully completed the senior property tax consultant registration examination under §66.22.
- (f) The requirements of subsection (e) of this section do not apply to a real estate property tax consultant.
- (g) A registered property tax consultant shall notify the department in writing of any change in employment or association within 30 days after the change.

66.71. Responsibilities of Registrant--Records. *(Amended effective October 1, 1995, 20 TexReg 7279; amended effective February 1, 2006, 31 TexReg 487)*

- (a) The registrant must allow the department, as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that are pertinent to an inspection or investigation being conducted.
- (b) Client records shall be maintained for not less than three years following the date last action was taken or service performed on behalf of the client.

66.72. Responsibilities of Registrant--Private Provider. *(Effective January 7, 1994, 18 TexReg 9928; amended effective February 21, 1995, 20 TexReg 890; amended effective February 1, 2006, 31 TexReg 487)*

- (a) The following statement shall be used on all advertising and registration forms: "This course has been approved by the Texas Department of Licensing and Regulation for _____ pre-registration education hours including hours of legal education pertaining to Property Tax Consulting. This course has been approved for ____ credits which count toward qualification for Senior Property Tax Consultant."
- (b) Providers shall retain student attendance records for a period of three years, make copies available to former students, and provide copies to the department upon request.
- (c) A certificate shall be provided to the participant and shall include actual hours attended.
- (d) To determine compliance with this chapter, the department may perform on-site audits of any program or course offered by a private provider. Audits may be conducted without prior notice to the private provider, and department employees may enroll and attend a program or course without identifying themselves as department employees. A department employee performing an audit may not be required to pay any fee to a private provider for enrolling in or attending a program or course.
- (e) Private providers and instructors shall fully assist any employee of the department in the performance of an audit or investigation of complaint, and shall provide requested information within the time frame set by the department.

66.80. Fees. *(Amended effective September 1, 2003, 28 TexReg 7363; amended effective May 1, 2005, 30 TexReg 2504; amended effective February 1, 2006, 31 TexReg 487)*

- (a) The non-refundable original application fee for a property tax consultant is \$50.
- (b) The non-refundable original application fee for a senior property tax consultant is \$75.
- (c) The refundable original registration fee for a property tax consultant is \$225. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.
- (d) The refundable original registration fee for a senior property tax consultant is \$240. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.
- (e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's, and real estate property tax consultant's registration is \$275. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.
- (f) A \$150 fee, refundable in accordance with §60.84 of this title, will be charged for each examination.
- (g) A \$25 fee will be charged for issuing a duplicate registration.
- (h) Late renewal fees for registrations issued under this chapter are provided for in §60.83 of this title (relating to Late Renewal Fees).
- (i) The non-refundable application fee for recognition as a private provider is \$125.
- (j) In addition to the application fee, a private provider shall pay an annual fee of \$75, which shall be refunded if the department does not recognize the private provider's educational program or course.

66.90. Sanctions—Administrative Sanctions/Penalties. *(Amended effective February 1, 2006, 31 TexReg 487; amended effective July 1, 2007, 32 TexReg 3984)*

If a person violates the Act, or a rule or order adopted or issued by the commission or executive director relating to the Act, the department may institute proceedings to impose administrative sanctions and/or administrative penalties in accordance with Texas Occupations Code, Chapter 51.

66.100. Code of Ethics and Professional Responsibility. *(Amended effective February 1, 2006, 31 TexReg 487)*

- (a) A registrant shall not participate, whether individually, or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act or commission rule.
- (b) A registrant shall not directly or indirectly or in any manner whatsoever lend his/her registration or identification to any person, firm or corporation for the purpose of evading any provision of the Act or commission rule.
- (c) A registrant shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the Act or commission rule.
- (d) A registrant shall not engage in any activity that constitutes dishonesty, fraud, or gross incompetence while performing property tax consulting services.
- (e) A registrant shall promptly report to the department any known violation of the Act or commission rule.
- (f) A registrant shall cooperate fully with the department in the investigation of an alleged violation of the Act or commission rule.

- (g) A registrant shall not offer or promise anything of value with the intent of inducing a person who is performing a public duty to perform or fail to perform any act related to such public duty.
- (h) A registrant shall not contract for or accept compensation or anything of value for services not performed.
- (i) A registrant shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation.
- (j) A registrant shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, a prospective client or employer, or a public agency or representative of a public agency.
- (k) A registrant shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law.
- (l) A registrant shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent.
- (m) A registrant shall not solicit or advertise property tax consulting services by claiming a specific result or stating a conclusion regarding such services without prior analysis of the facts and circumstances pertaining thereto.