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Division of Property Valuation

DIRECTIVE #99-034

TO: County Appraisers

SUBJECT: Classification of Unimproved Land used for Commercial or Industrial Purposes

This directive is adopted pursuant to the provisions of K.S.A. 79-505, and shall be in force and effect from and after the Director's approval date.

A question has arisen as to how unimproved land that is used for commercial or industrial purposes should be classified for property tax purposes: as a vacant lot or as real property used for commercial and industrial purposes. This question has tax consequences to the owner of the property because a vacant lot is assessed at 12% while real property used for commercial and industrial purposes is classified at 25%. Unimproved land should be classified as commercial real property when it is used for commercial or industrial purposes.

To explain, Article 11, Section 1 of the Kansas Constitution defines the pertinent subclasses of property as follows:

Class 1 shall consist of real property. Real property shall be further classified into seven subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (3) Vacant lots 12%
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- (6) Real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use..... 25%

K.S.A. 79-1439 mirrors the language in the constitution. The legislature has not further defined either of the two subclasses at issue.

Real Property Used for Commercial and Industrial Purposes.

Prior to the adoption of the system of classification now set forth in Article 11, Section 1 of the Kansas Constitution, the legislature defined “real property” as follows:

[T]he terms “real property,” “real estate,” and “land,” when used in this act, except as otherwise specifically provided, shall include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto.
(K.S.A. 79-102).

Under rules of constitutional and statutory construction, it is presumed that the legislature knew how the term “real property” was defined for property tax purposes when it drafted the classification system now set forth in Article 11, Section 1 of the Kansas Constitution, and in K.S.A. 79-1439. It is clear from K.S.A. 79-102 that the term “real property” includes land and also buildings, fixtures, improvements, etc., appertaining thereto. The definition of “real property” does not require that the land have a building or other improvement upon it in order for it to be considered “real property.” Thus, subclass (6) includes all real property used for commercial or industrial purposes, whether solely land, or land with improvements.

Vacant Lots.

Subclass (3) is set forth in the Kansas Constitution and in statute as simply “vacant lots.” We found no additional statutory language describing a “vacant lot” for Kansas property tax purposes. Since the term is first used in the constitution, it should be interpreted to mean what the words imply to persons of common understanding. *State ex rel. Stephan v. Finney*, 254 Kan. 632, 654, 867 P.2d 1034 (1994). An indication of a common man’s understanding of the term “vacant lot” appears in the dictionary. In WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY (1984), “vacant” is defined, in section 3. as: “Not put to use or occupied (a weedy vacant lot).” Therefore, using a common man’s definition of “vacant,” land that is put to use or occupied cannot be considered a “vacant lot” for property tax purposes.

Uniformity and Equality.

There is an inherent fairness issue here as well. There are commercial uses that can occur on land as well as improved land. For example, a car dealership may show cars on a grass lot or a paved lot. The paved lot would likely be more valuable than the grass lot, but that difference in the fair market value would be reflected in the county’s appraised value. Beyond that, the properties should be assessed equitably at the same rate, based upon the use of the property.

Degree of Use.

A very brief, insubstantial use of a vacant lot during the tax year is not sufficient to merit a change in classification. Common sense should be exercised to attain the goal of promoting uniform and accurate assessments.

Conclusion.

In conclusion, unimproved land that is used for commercial or industrial purposes shall be classified as commercial real property and assessed at 25%. Land that is not put to use or occupied shall be classified as a vacant lot and assessed at 12%.

Approved: February 24, 2000

Mark S. Beck
Director of Property Valuation