

Applying for Economic Development Tax Abatements

Any company must meet the guidelines of Article 11, Section 13 of the Kansas Constitution. The city or county granting the exemption makes this determination. The Board of Tax Appeals (BOTA) only decides if the guidelines have been legally met.

Article 11, Section 13 states: “Kansas counties and cities may exempt from all ad valorem taxation all or any portion of the appraised valuation of buildings, land, and tangible personal property used exclusively by a new business for (a) manufacturing, (b) research and development, or (c) the storing of goods traded in interstate commerce. Also, an exemption may be given for existing buildings or new expansions to existing buildings, and for the land and associated new personal property, for these same purposes, to facilitate the expansion of the business, if new employment is created. The exemption may extend for up to 10 years.”

If any portion of the property is leased, it will not qualify for an Article 11, Section 13 exemption. However, leased property can qualify under K.S.A. 79-221, which will allow the exemption if: (1) the lessor has at least a 51 percent ownership interest in the lessee’s business; (2) the lessee has at least a 51 percent ownership interest in the lessor’s business; or (3) the property is leased from a lessor that is a community based not-for-profit economic development corporation which is exempt from federal income taxation pursuant to section 501(c)(4) or (c)(6) of the Internal Revenue Code and the rented or leased property is integrally associated with other property previously exempted pursuant to Article 11, Section 13; and, the leased property is used exclusively for the same exempt purpose for which the exemption was granted through Article 11, Section 13.

Step One--Policies and Procedures

Prior to granting an economic development exemption, a city or county must do the following:

1. Develop and adopt official policies and procedures for the granting of such exemptions, including:
 - A. The required preparation of an analysis of the costs and benefits (CBA) of each exemption, including the effect of the exemption on state revenues. This is not where the actual CBA is completed; this only shows that a process for completing one is adopted.
 - B. Establishing a procedure to ensure the business receiving the exemption complies with any terms made by the local governing body for granting the exemption (payment in lieu of taxes, etc.), i.e. an annual review process. See K.S.A. 79-251, and amendments thereto.

Step Two--City or County Responsibilities

- The city or county must identify the property the applicant wants exempted, along with the value of the property; or, if the property has not yet been purchased or built, determine the estimated value of the property, and a general description needs to be done.
- Determine constitutionality, i.e. ask, “Is the property being used to manufacture articles of commerce, store goods or commodities which are sold or traded in interstate commerce, or for research and development?”
- Determine whether the application is for a new business or an expansion of an existing one.
- Determine whether applicant is in compliance with K.S.A. 79-250, which states that none of the following is eligible for any ad valorem tax exemption: poultry confinement facilities, rabbit confinement or swine production facilities which are on agricultural land and owned by a corporation, or limited liability company.

Step Three--Enacting Policies Established in Step One

The city or county must perform the cost benefit analysis (CBA) in order to determine what portion, if any, of the property to recommend for exemption. The CBA must include the effect of the exemption on state revenues, including the negative impact on the state-imposed levy for school finance, and for construction of state buildings. It is the city or county who decides whether exempting the property will promote economic development, and is in the best interest of the city, county, and state.

Once the CBA is completed, the city or county sets a public hearing date, notifies the school district and city/county clerk, and publishes notice in the appropriate newspaper. The notice must be published, at least once, seven days prior to the hearing (see K.S.A. 79-251, and amendments thereto). It is desirable to include in the notices the estimated or known value of property that will be removed from the tax rolls. Note however, that if a value is listed in the published notice, the exempted amount cannot exceed that published amount unless there is another published notice seven days prior to the hearing. In addition to publishing the notice and conducting the public hearing, the city or county clerk, whichever appropriate, must notify in writing the governing body and the unified school district within which the property proposed for tax exemption is located.

The city or county conducts the public hearing.

Step Four--Passing Ordinance or Resolution

Once the above steps are completed, the local governing body must pass an ordinance (city), or resolution (county), approving the applicant's property for an exemption. The ordinance or resolution must be published, it must clearly define the property to be exempted, and it should also specifically refer to:

1. Uniform policies and procedures outlined in Step One
2. The cost benefit analysis, and the date it was prepared
3. Notice of public hearing
4. Public hearing
5. Applicant's compliance with Article 11, Section 13, i.e. finding by governing body that the exempted property will be used exclusively for exempt purposes (See K.S.A. 79-251, amendments thereto)
6. Applicant's business status--new or expanding
7. Specific description of the property to be exempted (incorporate by reference any lists or exhibits that specifically list or describe the property)
8. The number of new jobs created
9. Payment in lieu of tax agreement
10. Compliance of business to city/county's stipulations

Step Five--Application

The applicant obtains, completes, and submits to the County Appraiser an application for exemption pursuant to Article 11, Section 13, including evidence that K.S.A. 79-250, 79-251, 79-253, and 79-221, if applicable, are satisfied.

Additionally, the following need to be included:

1. An application filing fee of \$500 for applications of \$1 million or less and \$1,000 for applications of more than \$1 million.
2. A copy of the city/county's uniform policies and procedures
3. The cost-benefit analysis, and the date it was prepared
4. A copy of the notice of public hearing and a copy of the letter sent to the effected taxing subdivisions
5. Evidence that a hearing was held
6. A copy of the ordinance or resolution that includes the finding made by the governing body that the property will be used exclusively for exempt purposes
7. A detailed list of property approved for exemption. At this point, only property indicated in previous steps should be included. If property is personal, include a detailed list of the dates of purchase and purchase prices. If property is real, include copy of deed and description of any improvements, i.e. the square footage of any buildings, parking lots, etc.

8. If the business using the property is relocating from one city or county to another city or county within this state, prior to qualifying for the exemption, the business must receive approval of the Secretary of the Department of Commerce. To qualify, the Secretary must make a specific finding that such relocation within the state is necessary to prevent the business from relocating outside the state.

If the applicant seeks assistance and follows instructions established by the Kansas Department of Commerce, and BOTA doesn't schedule a hearing or issue an order within 30 days after final relevant documents are submitted, the application is deemed approved (HB 2684).

The county appraiser will consider the application for property exemption, write comments on the application form, and forward all information to BOTA.

Step Six--BOTA Review

BOTA will review the application on a legal and factual basis. If more information is needed, it will be requested. BOTA will determine if the application, among other requirements:

1. Indicates city or county's approval of exemption
2. The ordinance or resolution have the same property detailed
3. Properly addresses the property description
4. Indicates compliance with Article 11, Section 13
5. Determines whether the applicant's business is new or expanding, the number of jobs hired to date, and the anticipated number of new employees resulting from the project

After above consideration, BOTA will issue an order setting forth its decision, or the case will be set for a hearing. Either party has the right to a hearing upon request. After issuance of the Board's decision, the applicant and the city or county have the right to request reconsideration within 30 days. Review of the Board's decision will be heard by the Court of Appeals. A petition for reconsideration must be filed in order to preserve the right to appeal to the Court of Appeals.

Once BOTA's order becomes final, the county appraiser may remove the property from the tax rolls as specified by BOTA's order. The order will refer to the local governing body's ordinance for the period of exemption, any payment in lieu of tax agreement, or partial exemption schedule.

On or before March 1 of each year during the period of exemption, the applicant must file with the county appraiser a claim for exemption. The claim simply states that an exemption has already been granted and that the business is maintaining its arrangement (K.S.A. 79-210).