

DEMYSTIFYING THE TAX APPEALS SYSTEM IN KANSAS

I. HISTORY OF THE KANSAS STATE TAX APPEAL SYSTEM

The Court of Tax Appeals, or its equivalent, has been in existence since the late 1800s. The jurisdiction now conferred upon the COTA has been vested at various times in a number of different administrative bodies, including the the Public Service Commission, the Inheritance Tax Commission, and others.

- A. In 1907, the Kansas legislature established a body called the Kansas Tax Commission, to which was delegated broad supervisory, investigatory and prosecutorial powers in the interest of providing statewide uniformity in property taxation.
- B. In 1939, the State Commission of Revenue and Taxation was established. That body provided a venue for tax appeals, but it also was responsible for appointing and supervising the Director of Revenue.
- C. In 1957, the legislature created the Kansas Department of Revenue (the KDOR), and within KDOR, the property valuation division (PVD) and the Board of Tax Appeals (BOTA).
- D. In 1975, the legislature severed BOTA from KDOR, making BOTA an independent quasi-judicial body.
- E. In 1995, the BOTA enabling statute was amended to require appointees to have “legal, accounting, or appraisal training and experience.”
- F. In 2003, BOTA was reduced to three members. The law also required members to be selected with “special reference to training and experience” for duties imposed on the Board. In addition, specific professional requirements were mandated. One member was to be regularly admitted to practice law in the state of Kansas and for a period of at least five years have engaged in the active practice of law as a lawyer or a judge. Another member was to have engaged in active practice as a certified public accountant for a period of at least five years.
- G. In 2008, the legislature dissolved BOTA and created in its place a new state tax tribunal called the Court of Tax Appeals (COTA).

II. THE COURT OF TAX APPEALS: AN INTRODUCTION

A. Function and Role

1. The Kansas State Court of Tax Appeals (COTA) is a specialized tax tribunal within the executive branch of state government. The COTA was established on July 1, 2008. *See* Act of April 21, 2008, ch. 109, 2008 Kan. Sess. Laws 453 (codified as amended at K.S.A. 74-2433).
2. The COTA is the highest administrative tribunal to hear cases involving *ad valorem* (property), income, sales, compensating use, and inheritance taxes, along with other matters involving taxation by state and local authorities.
3. The COTA is an independent tax tribunal. That means it is not affiliated with the Kansas Department of Revenue or any other taxing authority. The COTA is a neutral decision-making body. It does not report, directly or indirectly, to the Kansas Department of Revenue or any subordinate agency within the executive branch.
4. The COTA is solely a quasi-judicial agency. Unlike other administrative bodies, the COTA has no rulemaking or investigative powers.
5. The COTA is the only administrative body subject to the supreme court rules of judicial conduct applicable to district court judges.

B. Mission

The Court's mission is to resolve disputes between taxpayers and taxing authorities promptly and impartially and to help maintain public confidence in the state and local tax system.

C. Jurisdiction and Authority

The Court of Tax Appeals does not have plenary power over state and local tax matters. As a quasi-judicial body within the executive branch of government, COTA may hear and decide only those matters that fall within the authority specifically granted to it by the legislature.

1. The COTA has no equitable powers. It is constrained by the legal authority conferred upon it by the legislature. *See Saline Airport Authority v. Board of Tax Appeals*, 13 Kan. App. 2d 80, 761 P.2d 1261, rev. denied, 244 Kan. 738 (1988).

2. Although the COTA makes factual findings on constitutional issues, it has no authority to determine the constitutionality of a statute. *See Zarda v. State*, 250 Kan. 364, 826 P.2d 1365, cert. Denied, 504 U.S. 973, 119 L.Ed.2d 566, 112 S.Ct. 2941 (1992).

D. Divisions of the COTA

The COTA is comprised of two divisions – the regular division and the small claims and expedited hearings division.

1. Regular Division.

The court's regular division has broad jurisdiction to hear and decide tax matters including property tax appeals, appeals from final determinations of the Department of Revenue, tax grievances, applications for exemption from property tax, county-wide reappraisal requests, mortgage registration protests, no-fund warrant requests, and appeals from school districts with declining enrollment. Three judges are assigned to regular division matters: Chief Judge Bruce Larkin, Judge J. Fred Kubik, and Judge Trevor Wohlford. The regular division processes approximately 6,000 appeals and applications each year.

2. Small Claims and Expedited Hearings Division

The court's small claims and expedited hearings division is a convenient and informal forum for appealing the valuation of single-family residential properties and commercial properties appraised at two million dollars or less. This division also may hear appeals from the Department of Revenue, Division of Taxation, if the amount of tax in controversy does not exceed fifteen thousand dollars.

E. COTA Versus BOTA

Sub. H.B. 2018 resulted in a number of changes. Some were cosmetic (changes in nomenclature) while others were substantive.

1. Board of Tax Appeals became Court of Tax Appeals
2. Small Claims Division became Small Claims and Expedited Hearings Division
3. Board Members became Judges
4. Chairperson became Chief Judge
5. New position of Chief Hearing Officer was created to preside over the Small Claims and Expedited Hearings Division and to serve as judge *pro tempore*.

6. COTA was authorized to assess a fee not to exceed \$35 for single-family residential cases appealed from the small claims division to the regular division
7. Intermediate district court appeal was eliminated from tax appeal process. All appealable orders from COTA now go directly to the the Court of Appeals.

II. TAX TRIBUNALS IN OTHER STATES

States across the country utilize four general types of tax forums: (1) judicial branch tribunals, (2) specialized executive branch tribunals, (3) generalist appeal tribunals, and (4) appeal divisions within revenue agencies. Each type of forum has its own unique advantages and disadvantages.

III. COURT PRACTICE AND PROCEDURE

- A. The Kansas administrative procedures act (KAPA), K.S.A. 77-501 *et seq.*, applies generally to proceedings before the COTA.
- B. The Kansas rules of civil procedure are applicable where the KAPA or another statute does not specifically apply. *See* K.A.R. 94-5-1.
- C. The COTA is authorized to adopt rules and regulations relating to the performance of its duties. The court's regulations are found at K.A.R. 94-5-1 *et seq.*

IV. SUBSTANTIVE LAWS GOVERNING THE COURT'S JURISDICTION

A. Property Tax Appeals

Property tax appeals involve disputes over the appraised valuation of property. The appraised value is the basis of the county's property tax assessment. A property tax appeal may be taken either when the valuation notice is issued or when the tax is due.

Applicable Statutes: K.S.A. 79-1609 and K.S.A. 79-2005

B. Property Tax Exemptions

There are numerous property tax exemption statutes on the books in Kansas. The statute that is applicable for a given property use depends on a number of factors. Each exemption statute contains specific requirements which bear careful reading.

In order to file for a property tax exemption, the taxpayer must complete an exemption application and file the application with the county appraiser for review and recommendation. After the county appraiser has completed its review of the application and has made a written recommendation, the county will forward the application and supporting documents to the COTA. The county is required by law to review each application (and supporting documents) and make a recommendation regarding whether the exemption request should be granted or denied and whether a hearing should be held. *See* K.S.A. 79-213(d). In cases where the county recommends denial of an exemption, the county is required to include in its recommendation a statement of the controlling facts and law relied upon in reaching its negative recommendation. *See id.*

Applicable Statute: K.S.A. 79-213 (exemption application procedure)

C. Tax Grievances

A taxpayer may file a tax grievance to correct a county clerical error or to request abatement of penalties for untimely filing of a personal property rendition.

Applicable Statutes: K.S.A. 79-332a, K.S.A. 79-1422, K.S.A. 79-1427a, and 79-1702.

D. Kansas Department of Revenue, Division of Taxation Appeals

A taxpayer may file an appeal from a final decision of the Kansas Department of Revenue, Division of Taxation. Division of Taxation appeals may involve state income, sales, use, or other tax assessments.

Applicable Statutes: K.S.A. 74-2438 and K.S.A. 74-2433f

E. Mortgage Registration Protests

Under appropriate circumstances, a taxpayer may protest all or a portion of the registration fee required to be filed when a mortgage is recorded.

Applicable Statute: K.S.A. 79-3107c

F. Economic Development and Industrial Revenue Bonds

The COTA is responsible for reviewing all applications for Economic Development Bond and Industrial Revenue Bond exemptions. These applications are filed initially with the county appraiser in the county where the property is located. They are then forwarded to the COTA for final review and approval. The Kansas Department of Commerce is available to assist applicants with the process.

Applicable Statutes: Article 11, Section 13 of the Kansas Constitution; K.S.A. 79-213 and K.S.A. 12-1744a

G. Funding Adjustment Applications

The COTA is responsible for reviewing all applications by government bodies for issuance of warrants or bonds necessitated by emergencies or unforeseen circumstances. The COTA also reviews appeals by school districts to levy property taxes to finance costs associated with declining enrollment
Applicable Statutes: K.S.A. 12-110a, K.S.A. 79-2938, K.S.A. 79-2939, K.S.A. 72-6451

H. State Assessed Property Appeals and Applications

The COTA has jurisdiction over disputes involving the valuation, assessment and exemption of state-assessed property. State-assessed properties include public utility and railroad properties.
Applicable Statutes: K.S.A. 74-2438 and K.S.A. 79-213

V. REPRESENTATION BEFORE THE COTA

A. Regular Division

1. Representation of Natural Persons

In the regular division, a party who is a natural person may participate in a hearing either in person or through an attorney duly admitted to practice law in the State of Kansas and in good standing as an active member of the bar. See Kan. Op. Atty. Gen. 93-100; K.A.R. 94-5-6.

2. Representation of Artificial Persons

A party that is an artificial person, such as a private corporation or government entity, is permitted to participate in a COTA hearing by a duly authorized representative unless the COTA requires participation by counsel. See K.S.A. 77-515.

A corporate officer or employee is generally allowed to appear and testify on behalf of the corporation. Likewise, an elected or appointed official of the taxing authority is generally allowed to appear and testify on behalf of the taxing authority. See K.A.R. 94-2-10. However, duly authorized representatives not licensed to practice law in Kansas still may not practice law on behalf of the artificial entity. See Kan. Op. Atty. Gen. 93-100; K.A.R. 94-5-6.

B. Small Claims and Expedited Hearings Division

At small claims hearings any 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." K.S.A. 74-2433f(f). A county or unified government "may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representative so designated." *Id.*

Although K.S.A. 74-2433f(f) authorizes certain persons who are not licensed attorneys to provide representation at small claims hearings, non-attorney representatives still may not practice law before the Court. *See Kan. Op. Atty. Gen. 93-100.*

VI. APPEALS FROM COTA ORDERS

A. Exhaustion of Administrative Remedies.

1. A district court may award injunctive relief to remedy illegal tax levies, charges, assessments, or collections under certain circumstances. However, before seeking judicial review, a taxpayer must ordinarily exhaust all administrative remedies, at least when a full and adequate administrative remedy is provided by statute. *See e.g., Dillon Stores v. Board of County Comm'rs*, 259 Kan. 295, 298, 302, 912 P.2d 170 (1996); *Boeing v. Oaklawn Improvement District*, 255 Kan. 848, 877 P.2d 967 (1994); *Harshberger v. Board of County Comm'rs*, 201 Kan. 592, 597, 442 P.2d 5 (1968).
2. An exception to the exhaustion requirement are cases where the only issue presented is a constitutional issue that the COTA is not authorized to decide. *Zarda v. State*, 250 Kan. 364, 826 P.2d 1365, cert. Denied, 504 U.S. 973, 119 L.Ed.2d 566, 112 S. Ct 2941 (1992).

B. Petition for Reconsideration Mandatory

1. A petition for reconsideration is compulsory before a final COTA order can be appealed. K.S.A. 74-2426(b). Reconsideration must be requested within 15 days after certification of the order, adding three days if the order is mailed. K.S.A. 77-529.
2. If the aggrieved party fails to petition for reconsideration in a timely manner, neither COTA nor the judiciary has jurisdiction to further review the case. *See In the Matter of the Appeal of Sumner County*, 261 Kan. 307, 313, 930 P.2d 1385 (1997).

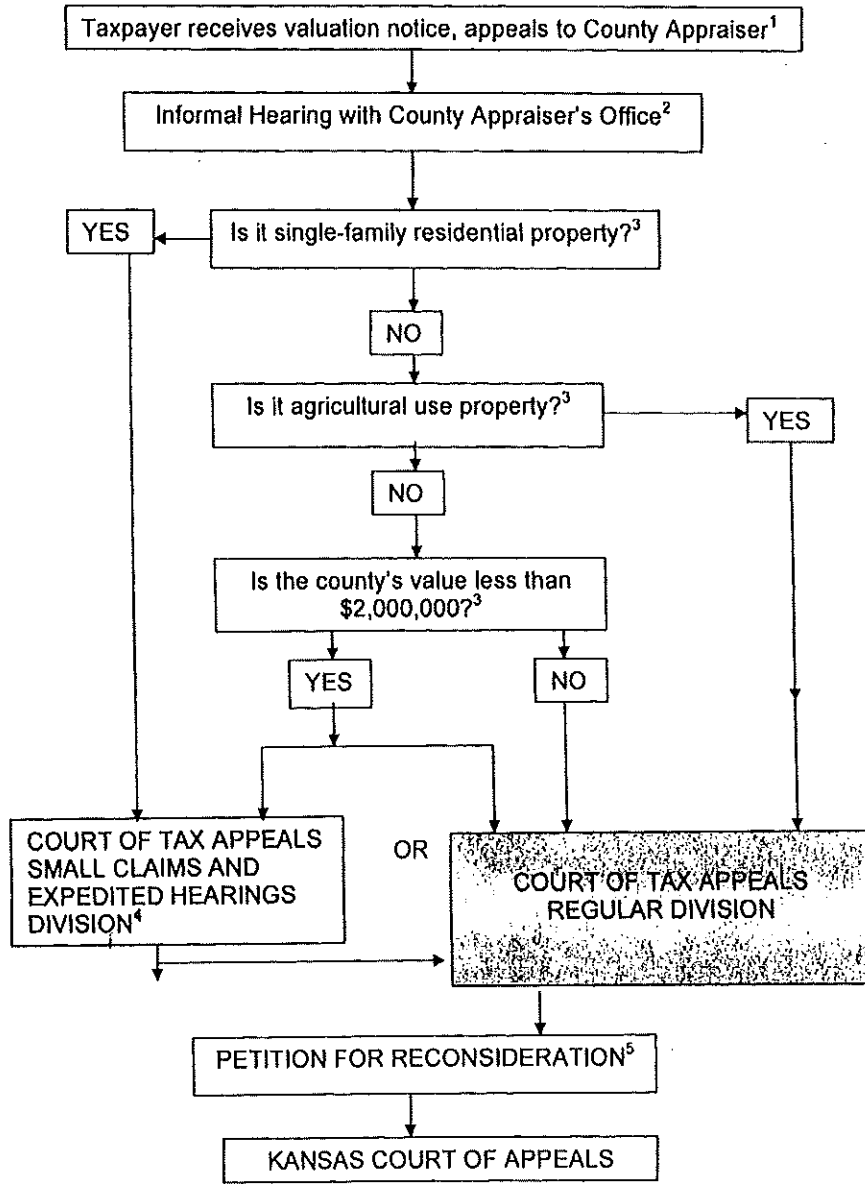
C. Reviewing Court

Court decisions in no-fund warrant cases cannot be appealed. K.S.A. 74-2426(c)(2). All other COTA decisions are appealable directly to the Kansas Court of Appeals.

D. General Information on Appeals.

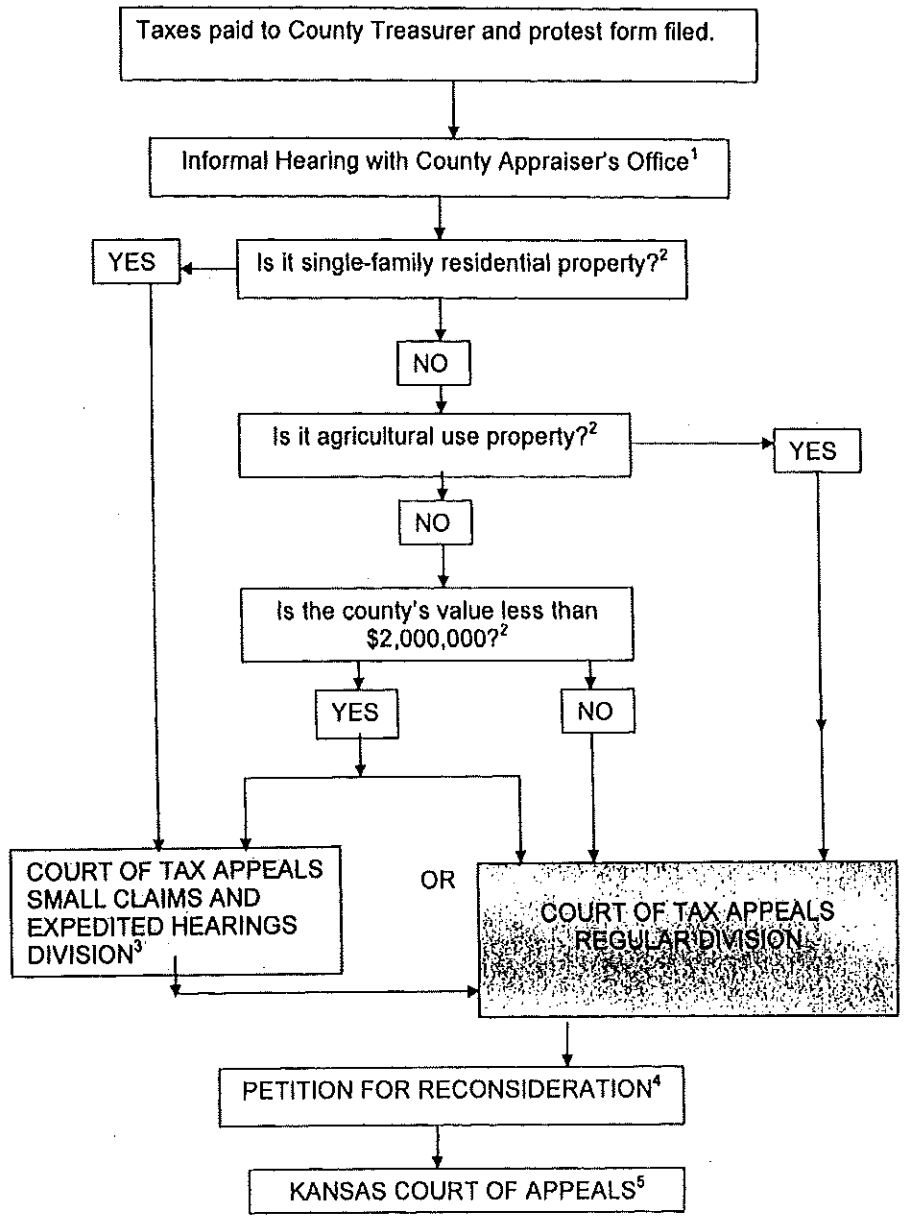
1. All appeals are considered on the official record made before the COTA. There is no provision for a *de novo* hearing on appeal. See *Wolf Creek Golf Links, Inc. v. Board of County Comm'rs*, 18 Kan.App.2d 263, 264, 853 P.2d 62 (1993). Nevertheless, the record may be limited on appeal by stipulation of the parties. K.S.A. 77-620(c). The record also may be supplemented with additional evidence, but only under limited circumstances. K.S.A. 77-619(a).
2. The COTA is not a party to any action for judicial review of a COTA decision. K.S.A. 74-2426(c)(1). However, a copy of the petition for judicial review must be served upon the COTA. K.S.A. 77-615(a). The COTA has no legal capacity to sue or to be sued. K.S.A. 74-2433(f).
3. Appeals from COTA decisions are governed by the Act for Judicial Review of Agency Actions, K.S.A. 77-601 *et seq.*, except as otherwise provided by K.S.A. 74-2426.

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)

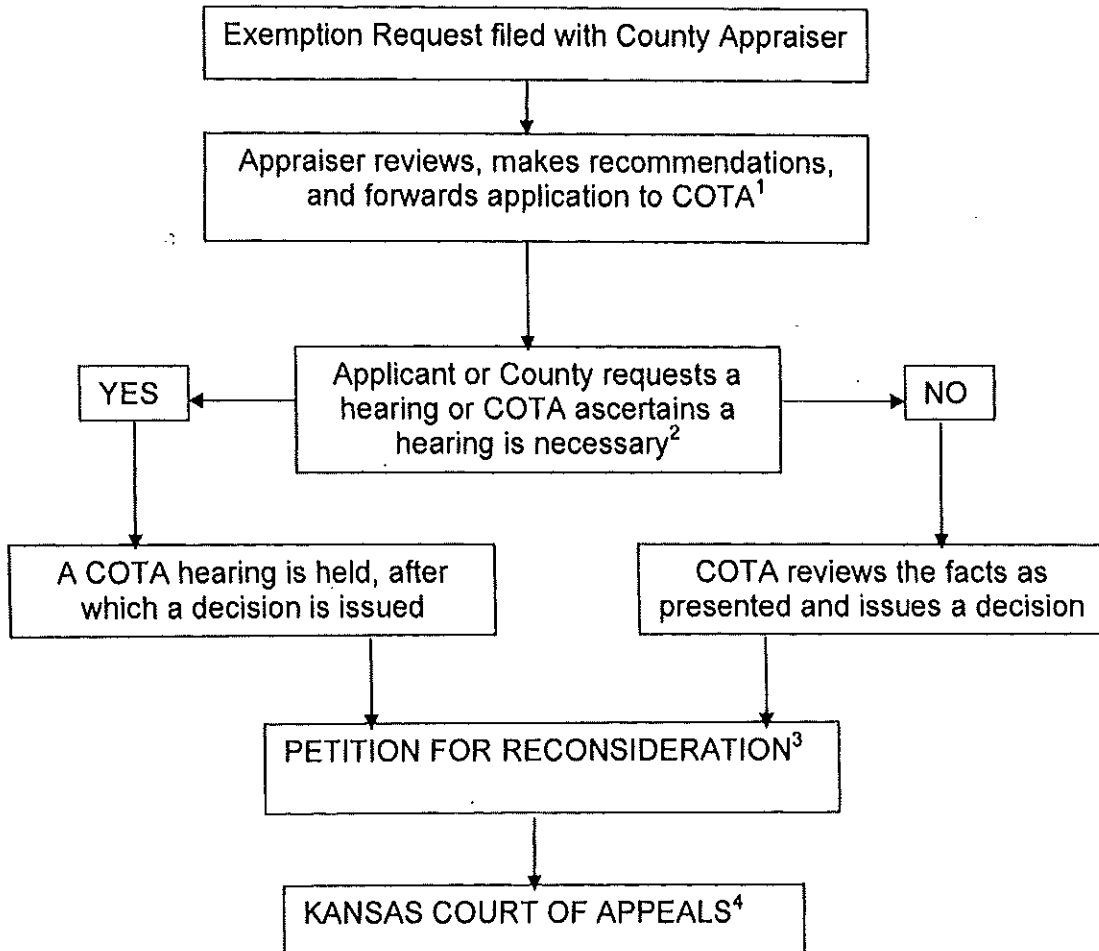


¹ Appeal from Informal Hearing results must be filed within 30 days [K.S.A. 79-2005]
² Small Claims and Expedited Hearings Division jurisdiction is limited and hearings are held in county where property is located or an adjacent county [K.S.A. 74-2433f]
³ An appeal from the Small Claims and Expedited 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]

REQUEST FOR EXEMPTION FROM TAXATION

(Pursuant to K.S.A. 79-213)

[**Except** for Economic Development Bond and Industrial Revenue Bond Exemptions]



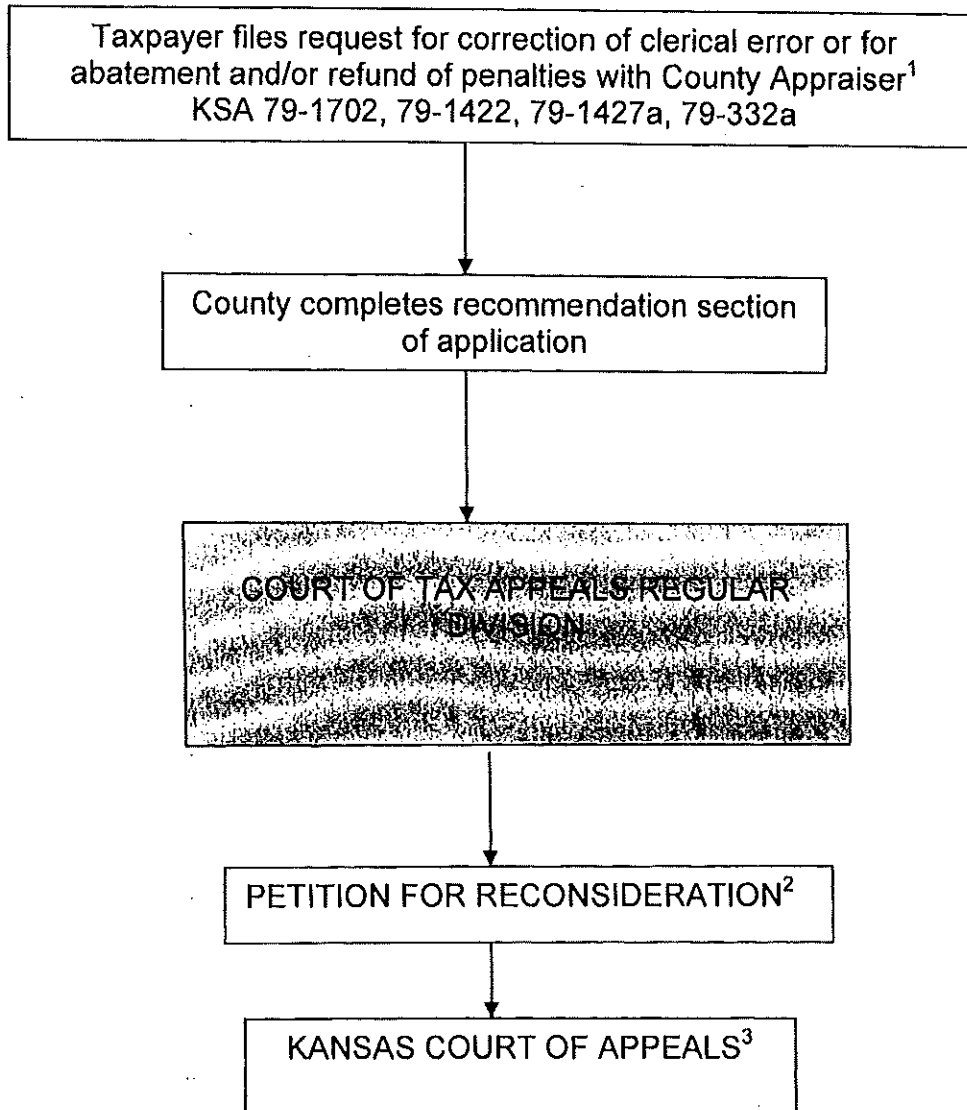
¹ A request for Exemption is filed with County Appraiser who makes a recommendation to grant or deny the exemption and forwards the application to COTA [K.S.A. 79-213 (c), (d), (e)]

² A hearing must be held if it is requested by either party or if the Court needs additional testimony or documentation. [K.S.A. 79-213(g)]

³ Petition for reconsideration must be filed with COTA within 15 days [K.S.A. 74-2426, 77-529 and 77-601 et seq.]

⁴ Judicial Review of COTA decisions in exemption requests must be filed with the Kansas Court of Appeals within 30 days [K.S.A. 77-529 and 74-2426]

TAX GRIEVANCES
(Pursuant to K.S.A. Chapter 79, Article 14 and 17)



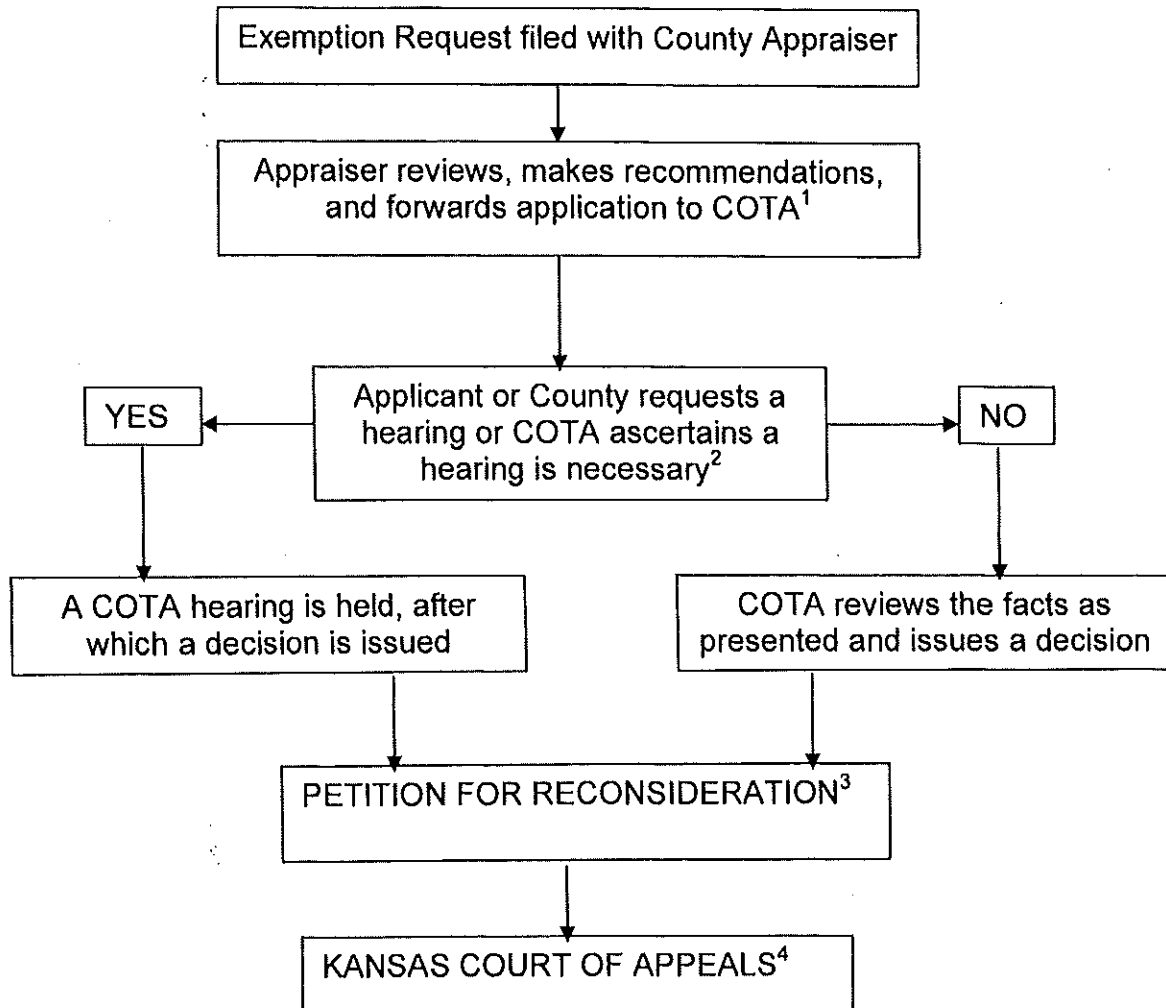
¹ Tax Grievance forms may be obtained from the County Appraiser

² Petition for reconsideration must be filed with COTA within 15 days [K.S.A. 74-2426, 77-529 and 77-601 et seq.]

³ 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]

REQUEST FOR EXEMPTION FROM TAXATION
(Pursuant to K.S.A. 79-213)

[Except for Economic Development Bond and Industrial Revenue Bond Exemptions]



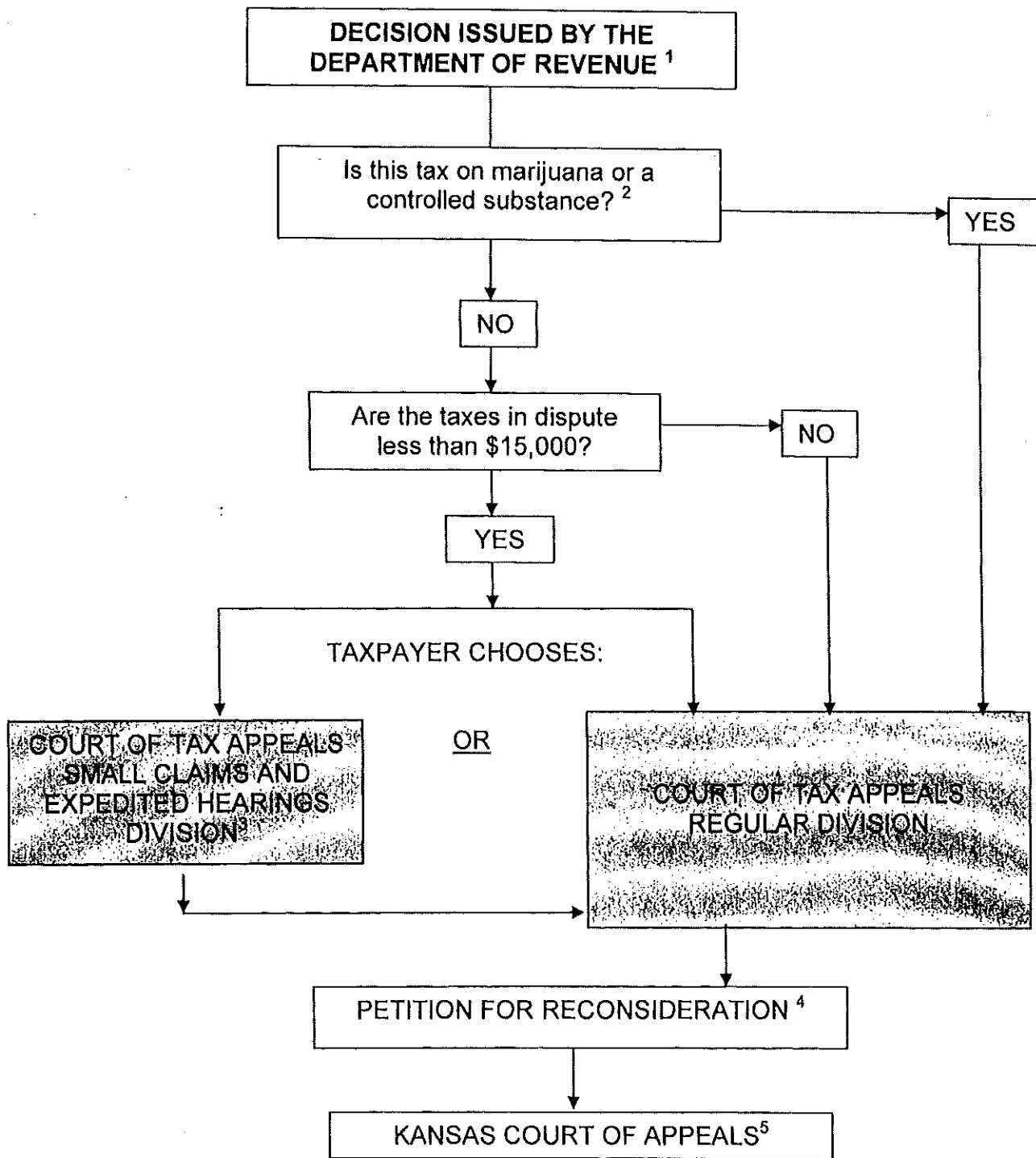
¹ A request for Exemption is filed with County Appraiser who makes a recommendation to grant or deny the exemption and forwards the application to COTA [K.S.A. 79-213 (c), (d), (e)]

² A hearing must be held if it is requested by either party or if the Court needs additional testimony or documentation. [K.S.A. 79-213(g)]

³ Petition for reconsideration must be filed with COTA within 15 days [K.S.A. 74-2426, 77-529 and 77-601 et seq.]

⁴ Judicial Review of COTA decisions in exemption requests must be filed with the Kansas Court of Appeals within 30 days [K.S.A. 77-529 and 74-2426]

APPEALS FROM THE DECISION OF THE
DEPARTMENT OF REVENUE, DIVISION OF TAXATION



¹ Any appeal of this decision must be filed within 30 days [K.S.A. 74-2438]

² Tax on controlled substances must be appealed to COTA [K.S.A. 79-5201 et seq.]

³ Hearings in Small Claims and Expedited Hearings Division are held in county where taxpayer resides or an adjacent county. [K.S.A. 74-2433f] Appeals from Small Claims to Regular Division must be in 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 in 30 days [K.S.A. 77-601 et seq. and 74-2426]