

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 23, 2004, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Senator Chris Steiniger
Jason Reed, member, Norton, Wasserman, Jones, and Kelly Law Firm
Lucky DeFries, Kansas Tax Coalition
Timothy Rogers, Salina Airport Authority
Lloyd Hetrick, Hetrick Air Services
Bud Burke, Cessna Aircraft Company
Chris Wilson, Kansas Agricultural Aviation Association

Others attending:

See Attached List.

With regard to the hearing scheduled for **SB 494** concerning tax delinquencies on property within a TIF redevelopment district, Senator Corbin announced that the Cloud County official who requested the introduction of the bill indicated last Friday that the bill is no longer needed. He then called the Committee's attention to the minutes of the February 18 meeting.

Senator Donovan moved to approve the minutes of the February 18, 2004, meeting, seconded by Senator Journey. The motion carried.

SB 521—Business aircraft property tax exemption

Gordon Self, Revisor of Statutes, pointed out that “corrected” appears at the top of the bill because he discovered an error in the original printing of the bill and subsequently requested that it be reprinted as corrected.

Senator Chris Steiniger testified in support of **SB 521**. He noted that **SB 521** is very similar to **HB 2551**, the industry bill which attempts to reinstate a tax exemption for aircraft owned by leasing companies as it was before a Board of Tax Appeals (BOTA) and Kansas Supreme Court decision in May 2003. He explained that, in order for Kansas not to be known as a state that changes the rules on investment midstream, **SB 521** would protect the exemption of small private planes purchased prior to July 1, 2004. Any planes acquired after July 1 would be on the tax rolls in accordance with the decision of BOTA and the Supreme Court. (Attachment 1)

Senator Steiniger also presented testimony prepared by Philip Burger, who was unable to attend the meeting due to a death in his family. In 1987, Mr. Burger started a small firm called BSC Aviation, Inc., which owns and rents aircraft. When the business was formed, it was granted a personal property tax exemption according to Kansas statute. In 2002, BSC made a decision to trade for a similar replacement aircraft. In early 2003, Mr. Burger received notice that he must reapply for the property tax exemption, based upon a Supreme Court Decision. Since the aircraft replaced one that was exempt for over 15 years, he expected approval of the exemption. He was stunned when he received notice that the exemption was denied. Since that time, he has spent many hours and dollars in an unsuccessful effort to reverse the decision. (Attachment 2)

Jason Reed, a member of the law firm Norton, Wasserman, Jones, and Kelly LLC of Salina, testified in support of **SB 521** only to the extent that an amendment be made to K.S.A. 79-201k as provided in a companion bill, **HB 2551**. He explained that his firm was involved in a May 2003 Kansas Supreme Court

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case regarding a group of doctors (Central Kansas E.N.T. Associates) who owned an airplane which they used in their line of business to provide health care to rural Kansas patients. In addition to the use of the airplane in their business corporation, the doctors rented the aircraft from their corporation for their personal use and paid the same fees as their patients. In that case, the Supreme Court determined the personal use of the aircraft made the exemption for the ad valorem tax not available. The Supreme Court determined that a 1988 amendment to K.S.A. 79-201k, which provided that the determining factor was whether the aircraft was used to earn income for the owner, did not overrule a case entitled *Kenneth Godfrey Aviation, Inc. v. Smith*, which was decided prior to the amendment. The facts underlying the *Kenneth Godfrey* case were similar to the facts in the *Central Kansas E.N.T.* case. The Court of Appeals determined in the *Kenneth Godfrey* case that there were two simultaneous uses of the property, one by the owner and the other by the lessee, and that both uses had to be exclusively for business in order to receive the tax exemption. In order to strengthen **SB 521**, Mr. Reed recommended that the Committee review **HB 2551** with regard to the use of the aircraft. In his opinion, **SB 521** as currently drafted would not modify the Kansas Supreme Court's interpretation of the *Kenneth Godfrey* case and the requirement of the "simultaneous uses" analysis along with the "exclusively used" requirement, especially after the decision in *Central Kansas E.N.T.* He contended that the focus should remain on the use of the aircraft by the owner. If the owner is using the aircraft to earn income, the use of the lessee should not be considered. In his opinion, this provision is the only way in which the *Central Kansas E.N.T.* opinion could be modified and the results therefore changed. ([Attachment 3](#))

Lucky DeFries, attorney at law, testified in support of **SB 521** on behalf of the Kansas Tax Coalition. He noted that, when the Legislature amended the statute in 1988 to clarify the business aircraft exemption to address concerns raised by the *Godfrey* decision, it was believed that business aircraft would be exempt from property taxation if rented or leased. When determining whether an exemption is appropriate, the Board of Tax Appeals has focused on whether the aircraft is being used exclusively by the owner to earn income in a rental business. The May 2003 Kansas Supreme Court decision suggests that the 1988 legislation may not have accomplished its intended purpose. Mr. DeFries urged the Committee to consider revising **SB 521** by including language substantially similar to that contained in **HB 2551**. ([Attachment 4](#)) In response to committee questions, Mr. DeFries explained that **HB 2551** provides that use by a lessee will not be a disqualifier, and the term "predominant" is defined as 80% or more. The bill also includes language concerning deductibility for federal tax purposes.

Timothy Rogers, Salina Airport Authority, noted that, although the Airport Authority appreciates the effort to address an ad valorem tax exemption for business aircraft through **SB 521**, it would not resolve the problem for future business aircraft owners. He recommended that, instead, the Committee support the provisions in **HB 2551**. He emphasized that exempting Kansas based aircraft used in business and industry is vital to the continued economic growth of communities such as Salina. ([Attachment 5](#))

Lloyd Hetrick, Hetrick Air Services, explained that his company applied for an exemption in January 2003 for two helicopters and one aircraft which are used for rental and instruction. The exemptions had been approved in the past. Therefore, he was surprised when he received notice in December 2003 that both the aircraft and helicopters had been denied exemption because the people who rent them use them for personal use. He emphasized that, as the owner of the aircraft, he uses them solely for business purposes. He noted that, if the ruling is allowed to stand, it will have detrimental effects for himself and other small aviation business aircraft owners. The tax will be passed to the end user, which will mean fewer rentals. In his opinion, the Board of Tax Appeals interpretation of the law is not the original intent of the law nor is it an interpretation that will benefit general aviation in the state. Mr. Hetrick urged the Committee to pass legislation to correct the current interpretation of the Board of Tax Appeals. ([Attachment 6](#))

On behalf of Cessna Aircraft Company, Bud Burke, testified in support of the portion of **SB 521** which would exempt aircraft used in business from property tax in cases after the Supreme Court decision until July 1, 2004. He noted that the grandfather portion of the legislation would restore what owners of business aircraft believed to be the intent of the law since its enactment in 1982. In addition, Mr. Burke expressed support for the language in **HB 2551**. He urged the Committee to amend **SB 521** with the same or similar language. ([Attachment 7](#))

Chris Wilson, Kansas Agricultural Aviation Association (KAAA), testified in support of the goal of **SB 521**. KAAA members currently have an exemption for aircraft used in their agricultural aviation businesses.

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Occasionally, they have a use for spray planes which could bring their exemption into question in light of the Court's decision. For example, many members fly on a volunteer basis for the U.S. Department of Interior to suppress wildfires. This is not part of their business nor does it generate income. KAAA members believe the statute should clearly reflect that business aircraft is exempt when it is predominantly used in the business. For this reason, Ms. Wilson suggested that the language in **HB 2551** be used. (Attachment 8)

Senator Corbin called attention to written testimony submitted by Marlee Carpenter, Kansas Chamber of Commerce, which includes comments on **SB 521** and support for the language found in **HB 2551**. (Attachment 9)

Senator Corbin suggested that conferees work with the Revisor of Statutes to amend provisions of **HB 2551** into **SB 521** as they suggested and that, due to time constraints, the proposed amendments be presented at the next committee meeting. With this, the hearing on **SB 521** was closed.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for February 24, 2004.