

Testimony in Support of Senate Bill 348

Good Afternoon, Mr. Chairman and members of the House Taxation Committee. My name is Aimee Betzen and I'm an assistant county counselor for Shawnee County. I am here to testify in support of this bill. Specifically, we are in support of the portion of the bill which amends K.S.A. 79-304, regarding the tax situs of boats.

The County is in support of this bill because the current version of K.S.A. 79-304 contains a loophole which can be and is used by boat owners to avoid paying taxes on their boats. In a recent decision, the Board of Tax Appeals allowed a boat owner to escape taxation on his boat because of how the statute is currently worded. The amendments to K.S.A. 79-304 contained in this bill will close this loophole.

The statute currently reads, "all personal property shall be listed and taxed each year in the taxing district in which the property was located on the first day of January" However, it goes on to state that "[w]henever any person, . . . removes tangible personal property from this state between November 1 and the next succeeding January 1 and returns such property to this state prior to the next succeeding March 1, such person . . . shall list such property for taxation with the county appraiser of the county to which such property is returned as required by K.S.A. 79-306, and amendments thereto unless the owner of such property submits proof to the county appraiser under oath that such property was removed from the state for legitimate business purposes, and has been listed for taxation for the appropriate tax year in some other state or territory."

Generally, boat owners use their watercraft over the warmer months. Many keep their boats in storage over the winter months, and if the boat owner lives near one of the state borders, he or she can easily store the boat out of the state over the winter months. It is easy enough for these boat owners to keep the boat out of the state from November 1st through March 1st because those are months in which most people do not use their boats. By so doing, these boat owners avoid having to pay taxes on the boat and counties, school districts and other taxing subdivisions are deprived of much-needed tax revenue. Additionally, taxpayers who do not manipulate the system end up shouldering more of the tax burden. This is not fair.

The Court of Tax Appeals case I mentioned earlier demonstrates a typical example of how easily some boat owners are able to escape paying taxes. The decision is attached. The boat owner in the case lived in Topeka and removed his boat to an underground warehouse in Missouri before November 1st of each year and did not return the boat to Kansas until after March 1st. He admitted that he only used the boat on Kansas lakes and that the only purpose for which the boat was in Missouri was for storage. Essentially, the boat owner availed himself of the use of Kansas resources, including roads and lakes without having to pay any taxes to support these resources. In addition, he did not have to pay taxes on his boat in Missouri because under the Missouri statutes, his boat did not acquire a situs there either.

The amendments in the bill would remedy this situation and bring the statute into conformance with other states' statutes regarding stored property and with other Kansas statutes. In most states, property stored in warehouses is usually considered to be "in transit" and thus not subject

to taxation. *See e.g.* MO Rev. Stat. 137.910. This is the case even if the property is at rest at the warehouse. In fact, other Kansas statutes state that property brought into Kansas from out-of-state and stored in a Kansas warehouse does not acquire a tax situs. K.S.A. 79-201f. It only makes sense, then, that the opposite should be true: property stored outside of Kansas in warehouses should still be subject to taxation in Kansas if the only reason the property is out of the state is for storage purposes. The amendments to the statute properly apply these concepts to boats that are stored outside of the state over the winter months.

The most recent version of the bill applies only to boats that are required to have a KA number. This is appropriate because boat owners acquire a KA number when they want to use Kansas lakes. Someone who uses Kansas lakes should have to pay Kansas taxes.

In conclusion, I ask that you adopt this bill and amend K.S.A. 79-304. I am happy to answer any questions you might have.

Thank you for your time and consideration.

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BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE PROTEST
OF HARGIS, ARNOLD D.
FOR THE YEAR 2010 IN
SHAWNEE COUNTY, KANSAS

Docket No. 2011-438-PR

ORDER

Now the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The Court conducted a hearing in this matter on May 10, 2011. The Taxpayer Arnold Hargis appeared in person and by counsel Brian Jacques. Shawnee County appeared by Aimee Betzen, Assistant County Counselor. The intervenor, Director of Property Valuation, Kansas Department of Revenue (hereinafter "PVD"), appeared by counsel William Waters. The Court admitted Taxpayer Exhibits #1 through #5, County Exhibit #1, and PVD Exhibits #1 through #5.

After considering all of the evidence and arguments presented, the Court finds and concludes as follows:

The Court has jurisdiction of the subject matter and the parties, as a tax protest has been properly and timely filed pursuant to K.S.A. 79-2005. The subject matter of this tax protest is a 1998 Crownline boat, known as ID# 089-PP-1617070000. The tax year at issue is 2010.

The facts presented are as follows: Mr. Hargis resides in Kansas, owns the subject boat, and uses the boat at Lake Perry in Kansas. He has a Kansas Department of Fish and Wildlife registration for the boat. Mr. Hargis purchased the boat in October 2007. When not using the boat at the lake during the spring and summer, he kept the boat at his home. Generally between October and April, he stored the boat in Missouri. With respect to the year at issue, Mr. Hargis took the boat to Missouri on October 11, 2009 for its winter storage at an underground warehouse. He returned the property to Kansas on April 3, 2010.

Tanya Biswell, personal property supervisor with the county appraiser's office, explained that the county received an email in May 2010 from PVD providing a "Notice to All Boat Owners." The notice stated in part that:

"All watercraft shall be listed and taxed in the taxing district in which the subject property is located on the first day of January, except property in transit shall be listed in the taxing district where the owner resides (K.S.A. 79-304). Property in transit includes watercraft located outside the State of Kansas on January 1, if such watercraft is covered by the federally approved numbering system administered by the Kansas Department of Wildlife and Parks."

At this instruction from PVD, the County added the subject boat to the tax roll in Shawnee County for tax year 2010. The County notes that at the same time, the County added other boats being stored out of state over the winter, that it was aware of, to the tax rolls.

The Taxpayer argued that the personal property ad valorem tax assessment by the County was improper because K.S.A. 79-304 provides a test as to where personal property should be taxed – the taxing district in which it is located on January 1. Further, Taxpayer asserted that the property was not "in transit," so it cannot be taxed where Mr. Hargis resides.

The County contends that county appraisers are required to perform their duties in conformity with Kansas law and follow the directions of PVD. PVD instructed the county to interpret the term "in transit" to apply to watercraft located outside the state on January 1 if the watercraft has a KA number. In addition, the County argued that the PVD instruction was correct because PVD has the authority, pursuant to K.S.A. 79-1404, to provide guidance regarding fixing such tax loopholes. PVD argued that the subject boat has its situs in Kansas, not Missouri.

K.S.A. 79-101 provides that "[a]ll property in this state, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner prescribed by this act." The act then prescribes at K.S.A. 79-304, in pertinent part that:

"All personal property shall be listed and taxed each year in the taxing district in which the property was located on the first day of January, but all moneys and credits not pertaining to a business located shall be listed in township or city and school district in which the owner resided on the first day of January, except that, a motor vehicle which is being used by and is in the possession of a student who is attending a university or college and which is owned by such student or by another person shall

be listed and taxed in the township, school district, city or taxing district in which the owner of the motor vehicle resided on the first day of January. *Whenever any person, association or corporation removes tangible personal property from this state between November 1 and the next succeeding January 1 and returns such property to this state prior to the next succeeding March 1, such person, association or corporation shall list such property for taxation with the county appraiser of the county to which such property is returned as required by K.S.A. 79-306, and amendments thereto unless the owner of such property submits proof to the county appraiser under oath that such property was removed from the state for legitimate business purposes, and has been listed for taxation for the appropriate tax year in some other state or territory.*

The property of banks, bankers, brokers, merchants, and of insurance or other companies, except of mutual fire insurance companies, shall be listed and taxed in the taxing district where their business is usually done, and manufactories and mines in the taxing district where the manufactories or mines are located.

Personal property in transit shall be listed in the taxing district where the owner resides except that, if such property is intended for a particular business, it shall be listed at the place where the business is to be transacted. [Emphasis added.]

The power to levy taxes is inherent in the power to govern. The exercise of the taxing power is dependent upon the existence of legislation imposing the tax. Nothing is taxable unless clearly within a taxing statute. *See Board of Co. Comm'rs of Leavenworth Co. v. McGraw Fertilizer Service, Inc. et al.*, 261 Kan. 901, 905, 933 P.2d 698 (1997) citing *Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.*, 229 Kan. 511, 512, 625 P.2d 494 (1981). "Tax statutes will not be extended by implication beyond the clear import of the language employed therein; their operation will not be enlarged so as to include matters not specifically embraced." *Id.* 261 Kan. at 905.

The rules of statutory construction are clear. The intent of the legislature controls if it can be ascertained from the plain language of the statute. *See State ex rel. Stovall v. Meneley*, 271 Kan. 355, 378, 22 P.3d 124 (2001). The words contained in a statutory provision are to be given their ordinary meanings. *See State v. Stallings*, 284 Kan.741, 742, 163 P.3d 1232 (2007). A statute should not be read as to add that which is not readily found therein. *See Director of Taxation v. Kansas*

Krude Oil Reclaiming Co., 236 Kan. 450, 455, 691 P.2d 1303 (1984); *In re Application of Allen, Gibbs & Houlik, L.C.*, 29 Kan.App.2d 537, 545, 29 P.3d 431 (2001). Further, when considering a tax statute, it must be recognized that:

"The right to tax is penal in nature, and this right must be strictly construed in favor of the taxpayer. [Citation omitted.] Tax statutes will not be extended by implication beyond the clear import of the language employed therein, and their operation will not be enlarged so as to include matters not specifically embraced. [Citation omitted.] Where there is reasonable doubt as to the meaning of a taxing act, it will be construed most favorably to the taxpayer. [Citation omitted.]" *In re Appeal of Director of Property Valuation*, 284 Kan. 592, 600, 161 Kan. 755 (2007) citing *In re Tax Exemption Application of Kaul*, 261 Kan. 755, 766, 933 P.2d 717 (1997).

The subject property was not located in a Kansas taxing district on January 1, 2010. As such, the general provision of K.S.A. 79-304 stating that "[a]ll personal property shall be listed and taxed each year in the taxing district in which the property was located on the first day of January" does not apply.

The statute lists other situations where personal property not located in Kansas on January 1 is still taxable in Kansas. Specifically, K.S.A. 79-304 addresses the situation where property is removed from the state of Kansas temporarily, but then is returned to the state. The language of the statute clearly describes the circumstances under which property remains taxable in Kansas: "[w]henever any person, association or corporation removes tangible personal property from this state between November 1 and the next succeeding January 1 and returns such property to this state prior to the next succeeding March 1, such person, association or corporation shall list such property for taxation with the county appraiser of the county to which such property is returned." The subject property was not required to be listed for taxation under this provision because the property was removed from the state in October and returned in April.

Since it is clear that the subject property is not taxable under those two provisions of the statute, both PVD and the County argue that the subject property was "in transit," and as a result, the last provision of K.S.A. 79-304 stating that "[p]ersonal property in transit shall be listed in the taxing district where the owner resides" is applicable.

While there is no definition of "in transit" in the statute or in the property tax statutory scheme, the term "in transit" has an ordinary meaning. Black's Law

Dictionary 823 (6th ed. 1990) defines "in transitu" as "[i]n transit; on the way or passage; while passing from one person or place to another. In the course of transportation." In a later edition, Black's Law Dictionary defines "in transitu" as "[b]eing conveyed from one place to another." Black's Law Dictionary 841 (8th ed. 2004). Webster's Third New International Dictionary 2428 (1993) defines "in transit" as "in passage; in the process of transit" and defines "transit" in relevant part as "an act, process, or instance of passing or journeying across, through or over;" "passage across;" "the conveyance or carriage of persons or things from one place to another."

Ray v. Board of County Comm'rs of Doniphan County, 173 Kan. 859, 252 P.2d 899 (1953) also provides some guidance regarding the interpretation of "in transit." At the time of *Ray*, K.S.A. 79-304 referenced the location of property on March 1, not January 1. The equipment at issue in *Ray* was owned by a Nebraska resident and had been brought to Kansas on January 24, 1951 and remained until April 30, 1951. The owner had brought the equipment to Kansas for purposes of a construction job and intended to return the equipment to his headquarters in Nebraska after completion of the job. The Kansas Supreme Court found that the equipment was not "in transit" on March 1st, but was permanently located in Kansas, at least for the time being.

In *V.S. Dicarlo Masonry Co., Inc. v. Higgins, et al.*, 178 Kan. 222, 284 P.2d 640 (1955), the Kansas Supreme Court discussed the word "transient" as it applied to cars that were owned by a corporation with its principal place of business in Kansas City, Missouri and utilized by the employees of the corporation in the advancement and promotion of the corporation's business, but were garaged at the residences of the employees in Johnson County, Kansas. The Supreme Court concluded under the facts of the case that the cars at issue were not in Kansas as transients because they were in Kansas every night and were in Kansas before, on and after March 1.

On January 1, 2010, the property in this case was in storage at a fixed location in Missouri. It was not passing from one location to another. It was not being transported; it was at rest. The subject property was in Missouri, permanently located there, at least for the seasonal timeframe. In light of the ordinary meaning of "in transit" and the *Ray* opinion, the Court finds that the subject property was not "in transit."

As the *Ray* Court noted, a state which has the right to tax personal property is not deprived of that right by the fact that the property may also be taxable in another state for the same period. *Id.* at 862. Similarly, the mere fact that Missouri has not taxed the subject personal property does not make the property

taxable in Kansas absent Kansas statutory authority imposing the tax. Kansas statutes are the issue in this case, not Missouri statutes.

Further, if we were to interpret "in transit" to include property that leaves the state for any period of time including January 1, but is then later returned to the state, the earlier provision of the statute describing the circumstances under which property remains taxable, as that property which leaves after November 1, but returns prior to March 1, would not be necessary. Interpreting the "in transit" language as suggested by PVD would render this earlier provision of the statute meaningless. See *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 685, 643-644, 941 P.2d 1321 (1997).

We note that the attorney general opinion cited by PVD dealt with a specific question implicating a discussion of the federal commerce clause and whether goods are "in transit" so as to be exempt from state taxation under the commerce clause of the federal constitution.¹ See Atty. Gen. Op. Letter December 21, 1959 to Mr. Peter F. Caldwell, Attorney, Property Valuation Department. A main point of the opinion was that the Kansas statutory exemption was broader than the limited scope of the federal commerce clause exemption requiring the interrupted movement be due to some purpose related to their interstate transportation, not due to mere business convenience or economy. While the attorney general found that "[t]he fact that the items are consigned to a warehouse here for purposes of business convenience and economy does *not, as a matter of law*, deprive them of their 'in transit' character within the meaning of the words 'in transit' as used in the [state exemption statute]...", we think it important to note that the attorney general concluded that the question of whether the goods at issue were "in transit" for purposes of the statutory exemption was a *question of fact* to be determined by the taxing officials.

In conclusion, we find that the facts presented in this appeal do not fall within any of the tax imposition provisions in the statute K.S.A. 79-304. As an administrative tax court, we must interpret the statutory language at issue as applied to the specific facts of each case. It is not our role to legislate or set public policy. *Republic Natural Gas Co. v. Axe*, 197 Kan. 91, 96-97, 415 P.2d 406 (1966)(Citations omitted.)

¹ With respect to the issue of whether goods are "in transit" under the commerce clause, the United States Supreme Court has stated that the question is that of "continuity of transit." A temporary pause in the transit of goods does not mean that they are no longer in commerce if the halt in the movement of the goods is a convenient intermediate step of getting them to their final destination. However, when property has come to rest within a state, being held there at the pleasure of the owner, the property is then deemed to be part of the property within the state and is subject to a state's taxing power. See *Seabrook Corp. v. Chatham Co. Bd. Of Equalization*, 195 Ga.App. 730, 394 S.E.2d 796, 797 (1990)(Citations omitted).

IT IS THEREFORE ORDERED that the subject property is not taxable in Shawnee County, Kansas for tax year 2010.

IT IS FURTHER ORDERED that the appropriate officials shall correct the county's records to comply with this Order, re-compute the taxes owed by the taxpayer and issue a refund for any overpayment.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 2010 Supp. 77-529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Court of Tax Appeals, Docking State Office Building, Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED

THE KANSAS COURT OF TAX APPEALS



Bruce F. Larkin
BRUCE F. LARKIN, CHIEF JUDGE

J. Fred Kubik
J. FRED KUBIK, JUDGE

Janis K. Lee
JANIS K. LEE, JUDGE PRO TEM

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY