

**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE APPLICATION
OF POWER FLAME, INC. FOR EXEMPTION
FROM AD VALOREM TAXATION IN
LABETTE COUNTY, KANSAS

Docket No. 2009-553-TX

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 September 11, 2009. The applicant, Power Flame, Inc., appeared by its attorney of record, Gerald Capps. Labette County appeared by its attorney of record, Fred Johnson. The Court admitted Applicant Exhibit #1 and County Exhibit #1. Testimony was presented by both parties.

The subject matter of this tax exemption application is described as follows:

2001 Beech King Air B200, ID #N215LW.

The Court has jurisdiction of the subject matter and the parties, as an application for exemption has been filed pursuant to K.S.A. 2008 Supp. 79-213.

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

I.

The applicant acquired the subject aircraft in April 2008. The aircraft is used to transport employees and customers to and from the applicant's facility. The aircraft is also used for personal purposes.

The applicant concedes that the aircraft does not qualify for exemption under K.S.A. 79-201k, which exempts aircraft used "predominantly to earn income for the owner in the conduct of the owner's business or industry." The applicant seeks exemption pursuant to K.S.A. 79-223(b) *First*, which exempts certain "[c]ommercial and industrial machinery and equipment" acquired after June 30, 2006.

The term "commercial and industrial machinery and equipment" is defined in the statute as follows:

“[C]ommercial and industrial machinery and equipment” means property classified for property tax purposes within subclass (5) of class 2 of section 1 of article 11 of the constitution of the state of Kansas.

See K.S.A. 2008 Supp. 79-223(b)(2). Other than referencing the Kansas Constitution, the statute provides no meaningful guidance as to what types of tangible personal property qualify for exemption as commercial and industrial machinery and equipment for purposes of exemption.

II.

The applicant’s principal argument in support of exemption is based on a strict textual reading of the statute. According to the applicant, K.S.A. 79-223 is unambiguous and must therefore be interpreted according to the ordinary and plain meaning of the statutory language. The applicant asserts that the subject aircraft is exempt because it falls squarely within the ordinary and plain meaning of the term “commercial and industrial machinery and equipment.”

The county disagrees with the applicant’s reading of the statute and recommends denial of the exemption application. According to the county, for purposes ad valorem taxation, tangible personal property falls under one of two general categories: “depreciated-value” property or “market-value” property. The county asserts that because aircraft are designated “market-value” property for purposes of property taxation, aircraft fall under subclass 2(6)—not subclass 2(5)—of section 1 of article 11 of the Kansas Constitution. According to the county, K.S.A. 79-223 is inapposite because the statute does not extend exempt status to subclass 2(6) tangible personal property.

III.

All property in this state not expressly exempt is taxable. K.S.A. 79-101. Tax exemption statutes are to be construed strictly in favor of taxation and against exemption, and the burden of establishing exemption rests with the applicant. See *In re Application of Central Kansas E.N.T. Associates, P.A.*, 275 Kan. 893, 897, 69 P.3d 595 (2003). Uniformity and fairness in property taxation depend as much on uniform application of the rules of exemption as on uniform application of the rules of assessment. See *Topeka Cemetery Ass’n v. Schnellbacher*, 218 Kan. 39, 43, 542 P.2d 278 (1975).

The material facts of this case are not in dispute. The sole question presented is one of law: Does the subject aircraft qualify as “commercial and industrial machinery and equipment” as that term is defined under K.S.A. 79-223(d)(2)?

It is a fundamental rule of statutory interpretation that the intent of the legislature as expressed through the plain language of the statute is controlling. *See State v. Valladares*, 288 Kan. 671, 675-76, 206 P.3d 879 (2009). The legislature’s intent should be ascertained through the statutory language it employs, giving ordinary words their ordinary meaning. *See State v. Gracey*, 288 Kan. 252, 257, 200 P.3d 1275 (2009). Only where the text of a statute is unclear, or ambiguous, is it appropriate to apply the canons of construction or to consider legislative history to enlighten the meaning of the statute. *See In re K.M.H.*, 285 Kan. 53, 79-80, 169 P.3d 1025 (2007).

This court recognizes these settled rules of statutory interpretation. Nevertheless, because in this case the statutory term under examination is defined by reference to a provision of the Kansas Constitution, our interpretation also must be informed by the rules governing constitutional interpretation, as enunciated by our state’s Supreme Court.

As previously noted, K.S.A. 79-223(d)(2) defines “commercial and industrial machinery and equipment” by referencing the provision in article 11 of the Kansas Constitution which establishes subclass 2(5) tangible personal property. Article 11 provides in pertinent part as follows:

Class 2 shall consist of tangible personal property. Such tangible personal property shall be further classified into six subclasses, shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Mobile homes used for residential purposes: 11 1/2%.
- (2) Mineral leasehold interests except oil leasehold interests the average daily production from which is five barrels or less, and natural gas leasehold interests the average daily production from which is 100 mcf or less, which shall be assessed at 25% : 30%.
- (3) Public utility tangible personal property including inventories thereof, except railroad personal property including inventories thereof, which shall be assessed at the average rate all other commercial and industrial property is assessed: 33%.
- (4) All categories of motor vehicles not defined and specifically valued and taxed pursuant to law enacted prior to January 1, 1985: 30%.

(5) Commercial and industrial machinery and equipment which, if its economic life is seven years or more, shall be valued at its retail cost when new less seven-year straight-line depreciation, or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight-line depreciation over its economic life, except that, the value so obtained for such property, notwithstanding its economic life and as long as such property is being used, shall not be less than 20% of the retail cost when new of such property: 25%.

(6) All other tangible personal property not otherwise specifically classified: 30%.

It has long been recognized that the polestar of constitutional interpretation is the intention of the makers and adopters. *See Hunt v. Eddy*, 150 Kan. 1, 90 P.2d 747 (1939). The meaning of a constitutional provision must be “gathered from both the *letter* and the *spirit* of the document.” 150 Kan. at 5 (emphasis original). As our Supreme Court has explained,

The Constitution must be interpreted liberally to carry into effect the principles of government which it embodies. It deals broadly with general subjects, and its language should not be interpreted in any narrow, refined, or subtle sense....

State v. Sessions, 84 Kan. 856, 115 P. 641 (1911).

Article 11 of the Kansas Constitution was amended in 1986 by House Concurrent Resolution 5018. That amendment created the property classification scheme that exists to this day.¹ Article 11 addresses the subject of property classification for purposes of ad valorem taxation and establishes a general framework for administering the tax in Kansas.

Like many constitutional provisions, the provisions of article 11 are expressed through broad language which is not without ambiguity when read in context. In particular, subclass 2(5)—identified as “commercial and industrial machinery and equipment”—is so broadly drawn that it could conceivably embrace property within any of the other five constitutional subclasses of tangible personal property. Because the meaning of the term “commercial and industrial machinery and equipment” in article 11 of the Kansas Constitution is not “entirely free from doubt”, the term should be interpreted as nearly as possible in accordance with the objects and purposes in contemplation at the time the constitutional provision was adopted by amendment in 1986. *See Hunt*, 150 Kan. at 1. As the Kansas Supreme

¹ Article 11 was amended again in 1992, but that amendment left the fundamental classification structure intact, changing only the rates of assessment applicable to the various subclasses.

Court has instructed, when interpreting a constitutional amendment, it is important to “examine the language used and consider it in connection with the general surrounding facts and circumstances that [caused] the amendment to be submitted.” *See In re Cent. Illinois Public Serv. Co.*, 276 Kan. 612, 621, 78 P.3d. 419 (2003) (citations omitted).

The 1986 amendment to article 11 was adopted in conjunction with statewide reappraisal. At the time, a commission called the Kansas Tax Review Commission was formed to advise the legislature on exigent property tax issues. After performing its study, the Commission concluded that statewide reappraisal was appropriate because property was not being taxed uniformly and equally throughout the state. *See Kansas Tax Review Commission, Final Report and Recommendations*, P-5 (1985). In its report, the Commission concluded that along with reappraisal, additional changes to the law were necessary to mitigate the shifts in tax burden among the various existing classes of property that would inevitably result from reappraisal. *See id.* at P-6. The commission recommended “a comprehensive, straightforward classification system” with different assessment rates depending on class. *See id.* at P-9.

IV.

The applicant has provided no legislative history to suggest that the object or purpose in contemplation at the time of the 1986 amendment was to substantively redefine the criteria employed by taxing authorities to classify property for purposes of ad valorem taxation. In fact, the legislative history suggests the opposite—that the amendment’s purpose was to mitigate the anticipated disproportionate effects of reappraisal on the classes of property existing at the time of the amendment’s adoption.

When the 1986 amendment was adopted, county appraisers were—as they are today—delegated wide-ranging duties and authority, including the duty to subclassify all taxable and exempt real and personal property “in a manner prescribed by the director of the division of property valuation.” *See K.S.A. 2008 Supp. 79-1459(e)*; *see also K.S.A. 79-1402* (delegating director of property valuation general supervision over system of taxation throughout state.)

Under guidelines issued by the director of property valuation, aircraft are classified under the “Other” subclass of tangible personal property and are assessed at a rate of 30%. Accordingly, aircraft fall under subclass 2(6), not subclass 2(5), of article 11 of the Kansas Constitution. Subclass 2(6) personal property is not exempt under K.S.A. 79-223.

We note further that the applicant has provided nothing to indicate that the county's classification of the subject aircraft is unreasonable, arbitrary or otherwise improper. Nor has the applicant shown that the director of property valuation's classification guidelines for aircraft are at odds with the duties and authority delegated by the legislature to the director. We therefore find no basis for rejecting the classification assigned to the subject aircraft by the county pursuant to the director's guidelines.

V.

This court also notes that there are two Kansas exemption statutes that pertain specifically to aircraft; business aircraft are exempt under K.S.A. 79-201k, and antique aircraft are exempt under K.S.A. 79-220. These statutes were on the books when K.S.A. 79-223 was enacted in 2006, and they remain in effect to this day.

General and special statutes are to be harmonized whenever possible. *Alliance Mortgage v. Pastine*, 281 Kan. 1266, 1274, 136 P.3d 457 (2006). However, "[t]o the extent a conflict exists, the special statute will prevail unless it appears that the legislature intended to make the general statute controlling." *Id.* As the Kansas Supreme Court has explained:

It is a cardinal rule of law that statutes complete in themselves, relating to a specific thing, take precedence over other statutes which deal only incidentally with the same question, or which might be construed to relate to it. Where there is a conflict between a statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case.

Chelsea Plaza Homes, Inc. v. Moore, 226 Kan. 430, 432, 601 P.2d 1100 (1979).

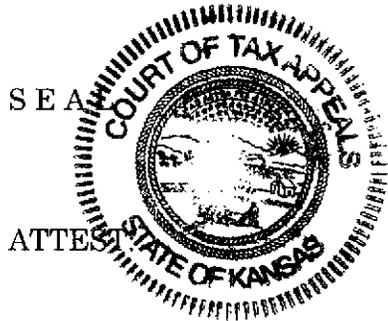
Through its enactment of K.S.A. 79-223, the legislature provided a broadly defined exemption for certain tangible personal property designated "commercial machinery and equipment" under the classification system established pursuant to article 11 of our state constitution. That statute, when interpreted narrowly and without reference to historical context, could conceivably relate—at least incidentally—to business aircraft. However, a separate statute (K.S.A. 79-201k) squarely and explicitly addresses the subject of business aircraft and explicitly sets out the requirements for exemption. We find K.S.A. 79-201k to be complete in itself and to be the only statute governing exemption of business aircraft under Kansas law. Because the applicant concedes that the subject aircraft does not qualify for exemption under K.S.A. 79-201k, the the aircraft is taxable.

IT IS THEREFORE ORDERED that the application for exemption from ad valorem taxation is denied.

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. 2008 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





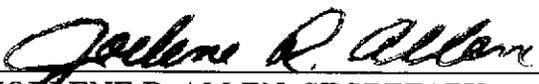
BRUCE F. LARKIN, CHIEF JUDGE



J. FRED KUBIK, JUDGE



TREVOR C. WOHLFORD, JUDGE PRO TEM



JOELLENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2009-553-TX, and any attachments thereto, was placed in the United States Mail, on this 16th day of January, 2010, addressed to:

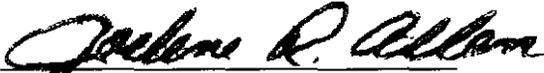
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary