

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

IN THE MATTER OF THE
APPLICATION OF TRANSCANADA
KEYSTONE PIPELINE, L.P. FOR
EXEMPTION FROM AD VALOREM
TAXATION

Docket No. 2010-8538-PVX

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

Now the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas on cross motions for summary judgment pursuant to K.S.A. 60-256, Kan. Sup. Ct. R. 141, and K.A.R. 94-5-15. Oral arguments were heard on March 28, 2012. Jurisdiction over the parties and of the subject matter is proper pursuant to K.S.A. 79-213.

The applicant, TransCanada Keystone Pipeline, LP ("Keystone") appeared by and through its attorneys of record, S. Lucky DeFries and Jeffrey A. Wiethern of *Coffman, DeFries & Nothern PA*, along with John. R. Haug of *SNR Denton US LLP*, admitted *pro hac vice*. The Kansas Department of Revenue, Property Valuation Division ("PVD") appeared by and through its attorney of record, William E. Waters. *Amici curiae* papers were filed with permission of this court on behalf of the counties of Butler, Clay, Cowley, Dickinson, Marion and Washington. The attorney of record for the *amici curiae* is Carol B. Bonebrake of *Cosgrove, Webb & Oman*.

In this matter Keystone seeks review of PVD's final recommendation denying exemption from *ad valorem* property tax for that portion of an interstate crude oil pipeline known as the "Cushing Extension" located within the state of Kansas. The subject pipeline enters Kansas from Nebraska and crosses the state from north to south through the counties of Butler, Clay, Cowley, Dickinson, Marion, and Washington. For purposes of this exemption matter, the subject pipeline is identified as: PVD ID NO. F3202.

I.
Summary Judgment Standards

The standards for summary judgment are well known. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. K.S.A. 60-256(c). The purpose of summary judgment is to eliminate delay in legal disposition where there are no genuine issues of material fact. *Timi v. Prescott State Bank*, 220 Kan. 377, 386, 553 P.2d 315, 323 (1976). Summary judgment is nonetheless a drastic remedy; the movant has the burden of demonstrating there are no genuine questions of material fact and that judgment as a matter of law is appropriate. *See Saliba v. Union Pac. R.R.*, 264 Kan. 128, 131, 955 P.2d 1189 (1998).

Questions involving statutory interpretation or construction, such as those presented in this instance, are questions of law and, as such, are particularly suited for summary judgment. *See Mitchell v. Liberty Mutual Ins. Co.*, 271 Kan. 684, 692, 24 P.3d 711 (2001). Whether certain property is exempt from *ad valorem* taxation is a question of law if the material facts are not disputed. *See Lario Enterprises, Inc. v. State Bd. of Tax Appeals*, 22 Kan. App. 2d 857, 859, 925 P.2d 440 (1996).

II.
Uncontroverted Facts

It is agreed that the material facts of this case are not subject to genuine dispute. Keystone is a company engaged in the business of constructing and operating pipelines for transporting oil, natural gas, hydrocarbons, and petroleum products and byproducts. It is a limited partnership comprised of one limited partner, TransCanada Keystone Pipeline, LLC, and one general partner, TransCanada Keystone Pipeline GP, LLC. The two partners are wholly owned subsidiaries of TransCanada Corporation, which is headquartered in Calgary, Alberta, Canada.

In February 2005, Keystone announced plans to build a 2,148 mile pipeline beginning at Hardisty, Alberta, Canada, crossing the United States border and traversing the states of North Dakota, South Dakota, Iowa, Missouri, and terminating in Wood River and Patoka, Illinois. This transnational pipeline is

known as the "Mainline." The United States portion of the Mainline was later rerouted to include approximately 1,084 miles of pipeline and 24 pumping stations in the states of North Dakota, South Dakota, Nebraska, Kansas, Missouri and Illinois. Keystone began construction of the Mainline in the spring of 2008 and commenced commercial operations on the line in June 2010. The Mainline delivers approximately 435,000 barrels of crude oil per day to refineries in Wood River and Patoka, Illinois.

Relevant to this case is a pipeline known as the "Cushing Extension," which connects with the Mainline and extends from Steele City, Nebraska, crosses Kansas from north to south for a distance of approximately 210 miles, and terminates in Cushing, Oklahoma. Keystone seeks exemption for that portion of the Cushing Extension located in Kansas.

Plans to build the Cushing Extension were announced in late 2005. Construction of the line began in spring 2010, and commercial operations commenced in February 2011. The Cushing Extension delivers approximately 156,000 barrels of crude oil per day from Steele City, Nebraska, through Kansas, and on to the Cushing facility in Oklahoma. The Cushing facility is a major crude oil marketing, refining and pipeline hub. The Mainline and Cushing Extension together deliver to the United States approximately 591,000 barrels of crude oil per day from production sources in Canada. Keystone maintains and operates both the Mainline and the Cushing Extension.

During the Cushing Extension planning phase, the Kansas legislature began debating a piece of legislation known as the Kansas Energy Development Act. In general terms, the Act authorizes incentives for energy-related projects for refineries, pipelines, fertilizer plants, and other such capital investment. The Act includes income tax credits, financing assistance, and property tax exemptions for qualifying projects, including a property tax exemption for certain new pipeline projects. The Act's pipeline exemption applies to all taxable years from the commencement of construction or installation of a qualifying pipeline and for the ten taxable years immediately following completion of the project. The Act went into effect July 1, 2006.

The Kansas Department of Commerce is the agency of government delegated authority to implement the provisions of the Kansas Energy Development Act. On October 17, 2008, Keystone submitted an application for income tax credits for its pipeline project pursuant to K.S.A. 79-32,224. The application identified all three phases of the project: the Mainline (Phase I), the Cushing Extension (Phase II), and the Keystone XL (Phase III). Keystone sought, and was granted, tax credits in

connection with Phases II and III, and an Incentive Agreement confirming Keystone's entitlement to ten years of state income tax credits was executed for those phases of the project. The Incentive Agreement recites that refineries in Kansas would have access to the pipeline project for the transportation of crude oil and/or natural gas liquids.

On or about March 11, 2008, the United States Department of State issued its presidential permit authorizing construction, connection, operation and maintenance of Keystone's pipeline project. The permit followed an extensive State Department investigation into the project, including an assessment of the project's potential impact on the environment and on historical lands and endangered species.

On November 1, 2010, Keystone filed its application for property valuation exemption (the "PVX Application") pursuant to K.S.A. 79-227, seeking exemption from *ad valorem* property tax for that portion of the Cushing Extension located within Kansas. In general terms, an exemption under K.S.A. 79-227 is available for segments of new pipelines in Kansas that have a certain minimum length within Kansas and that are accessible to refineries in Kansas.

PVD recommended denial of the exemption request upon its review of the PVX Application and continues to oppose the exemption to date. In its responsive recommendations and comments to the PVX Application, the agency stated as follows:

"Although refineries in this state have access to crude oil being transported into Cushing, Oklahoma via the subject pipeline, no evidence has been submitted establishing that they have access to a 'pipeline which is located in this state.'"

Keystone concedes that Kansas refineries do not receive Canadian crude oil pumped through the subject pipeline via access points located within the political boundaries of Kansas. Rather, the oil that is moved through the subject pipeline is accessible to refineries in Kansas by means of existing delivery lines that connect to the Cushing Extension at the Cushing market hub in Oklahoma. This existing infrastructure is commercially adequate to transport Canadian crude oil to refineries in Kansas, and refineries in Kansas are capable of transporting and refining the product supplied via the Cushing Extension.

Refineries in Kansas at no time contemplated having—or needing—access to crude oil supplied through the Cushing Extension by any means other than the existing delivery lines and supporting infrastructure. The cost to construct new lateral delivery lines connecting refineries in Kansas to the Cushing Extension at points within the political boundaries of Kansas would be considerably higher than the estimated value of the property tax exemption.

III. *The Pipeline Exemption*

All property in this state not expressly exempt is taxable. K.S.A. 79-101. The exemption of property to advance a public purpose or to promote the public welfare is solely the province of the legislature. *See State ex rel. Tomasic v. Kansas City*, 237 Kan. 572, 578, 701 P.2d 1314 (1985). As a political body, “[t]he legislature is judge of what exemptions are in the public interest and will be conducive to the public welfare.” *Lario*, 22 Kan. App. 2d 857 at 860. The role of this court, in turn, is to interpret the exemption laws enacted by the legislature, to review the evidence and legal authorities presented by the parties in interest, and to render findings of fact and conclusions of law based on the record. *See* K.S.A. 77-525 and 77-526.

When interpreting tax exemption statutes enacted by the legislature, this court is bound by the principle that taxation is the rule and exemption the exception. The burden of establishing an exemption from taxation is on the one claiming the exemption. *Director of Taxation, KDOR v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 455, 691 P.2d 1303 (1984). Tax exemption statutes are construed strictly in favor of taxation and against allowing exemption for those not clearly qualifying. *Presbyterian Manors, Inc. v. Douglas Cty.*, 268 Kan. 488, 492, 998 P.2d 88 (2000).

At issue here is the statutory exemption for “new qualifying pipeline property,” codified at K.S.A. 79-227. The term “new qualifying pipeline property” includes “any real or tangible personal property purchased, constructed or installed for incorporation in and used as part of a new qualifying pipeline,” provided construction began after December 31, 2005. *See* K.S.A. 79-227(d)(1).

In this case the record is clear that construction of the subject pipeline began after December 31, 2005, and that the project consists of real or tangible personal property constructed and installed for incorporation in and use as part of a new pipeline. Thus, the narrow focus of the parties’ dispute falls on the term “qualifying pipeline,” which under K.S.A. 79-227(d)(2) is defined solely by reference to an

income tax credit provision of the Kansas Energy Development Act. That provision, K.S.A. 79-32,223(d), states:

"Qualifying pipeline" means a pipeline which is located in this state, is used primarily for transportation of crude oil or natural gas liquids and has a length of more than 190 miles in this state and to which refineries or natural gas liquid processing facilities in this state have access."

The parties appear to agree that the subject pipeline satisfies the first three requirements of K.S.A. 79-32,223(d). It extends across the state. It is used primarily for transportation of crude oil. And it is comprised of more than 190 miles of length within the state. The only point of disagreement is the fourth requirement—the refinery access requirement.

According to Keystone, the refinery access requirement is satisfied by virtue of the fact that refineries in Kansas have access to crude oil transported through the subject pipeline by means of infrastructure that was already in place when the subject pipeline was built. This infrastructure consists of lines that move oil from the subject pipeline to refineries in Kansas by way of connections at the Cushing market hub in Oklahoma. In essence, Keystone argues, the subject pipeline meets the access requirement because it is accessible to refineries in Kansas via existing delivery lines which tap into the subject pipeline at the Cushing hub in Oklahoma and then pump oil from the pipeline back into Kansas for processing by refineries in Kansas.

PVD disagrees with Keystone's interpretation of the refinery access requirement. According to PVD, the requirement may be satisfied *only* if refineries in Kansas have access to a pipeline crossing Kansas at points located in Kansas. According to PVD, because the lines delivering oil from the subject pipeline to refineries in Kansas connect with the pipeline in Cushing, Oklahoma, and not somewhere in Kansas, Keystone has failed to satisfy the refinery access requirement. In effect, PVD's position is this: In order for any portion of an interstate pipeline crossing Kansas to be exempt under K.S.A. 79-227, its delivery infrastructure must be configured such that, upon entering Kansas, the product carried by the pipeline remains inside the political boundaries of Kansas at all times until reaching refineries or processing facilities in Kansas.

In evaluating the competing statutory theories presented under the uncontroverted facts, this court is guided by the rules of statutory construction long endorsed by Kansas courts. The rule of statutory construction to which all others

are subordinate is that the intent of the legislature controls if it can be ascertained from the text of the statute. *See Ex rel. Stephan v. Board of Seward Cty. Comm'rs*, 254 Kan. 446, 448, 866 P.2d 1024 (1994). The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. *State v. Marsh*, 278 Kan. 520, Syl. ¶ 18, 102 P.3d 445 (2004). Thus, when a statute is clear and unambiguous, a court must give effect to the legislative intent as expressed in the statutory language rather than try to determine what the law should or should not be. *State ex rel Stephan v. Board of County Commissioners*, 254 Kan. 446, 447, 866 P.2d 1024 (1994).

The initial step in interpreting a statutory provision is to determine whether the text of the statute is ambiguous and thus open to construction. In so doing, this court is obliged to give ordinary words their ordinary meanings. *Kansas Krude*, 236 Kan. at 455. We also are sensitive to how the words and sentences used by the legislature in the statute cohere to the overall structure of the legislative act. As a rule, tax statutes should not be extended by implication beyond the clear import of their text, and their operation should not be enlarged to include matters not specifically embraced. *Id.* And, although tax exemption statutes are strictly construed, strict construction does not mean unreasonable construction. *See In re Application of Lietz Construction Co.*, 273 Kan. 890, 905, 47 P.3d 1275 (2002).

Upon examining the statutory text, if it is determined the statute in question is clear and unambiguous, the plain meaning of the statute controls, and the analysis is at an end. *See In re Mental Health Ass'n of Heartland*, 289 Kan. 1209, 1216, 221 P.3d 580 (2009). If, however, the statute is susceptible of more than one meaning, it is ambiguous, in which case extrinsic factors should be examined. Such factors include "the historical background of the enactment, the circumstances attending passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested." *In re Appeal of University of Kansas School of Medicine-Wichita Practice Assoc.*, 266 Kan. 737, 749-50, 973 P.2d 176 (1999) (citations omitted).

As noted, the statutory term under examination here—"qualifying pipeline"—is used in connection with both the income tax credit provisions and the property tax exemption provisions of the Kansas Energy Development Act. The term is defined in the income tax credit section of the Act at K.S.A. 79-32,223(d), and that definition is then incorporated by reference in the property tax exemption section at K.S.A. 79-227(d)(2). Because these statutory provisions were enacted as part of a common piece of legislation, it must be presumed they were intended to be governed by common policy considerations and purposes. Under the maxim *in pari materia*, statutory provisions relating to the same subject are considered to be

expressive of a common legislative statement and should therefore be read together in an attempt to reconcile differences and reach sensible, rational results. *See McVay v. Rich*, 18 Kan. App. 2d 746, 752, 859 P.2d 399, 404 (1993), *aff'd*, 255 Kan. 371, 874 P.2d 641 (1994).

Further, it should be noted that the statutory provisions in question here are subject to administrative interpretation. The legislature has delegated express authority to the Kansas Department of Commerce to adopt rules and regulations necessary to administer and implement the Kansas Energy Development Act. *See* K.S.A. 74-5002r, 79-32,224(d)(3). Pursuant to that authority, regulations were promulgated to define a variety of terms used in the Act. Specifically, K.A.R. 110-16-1(a) defines "access to state refineries" as "direct or indirect access through a mechanism to ensure the efficient transportation of crude and processed oil to the pipeline for which an application for tax benefits has been submitted."

PVD asserts two grounds for rejecting the Department of Commerce regulation in this case. First, it argues that because the regulation uses the words "direct or indirect" to define the refinery access requirement, the regulation is without the authority conferred by the legislature. Second, it argues that the regulation is incongruous under the facts of this case because it defines refinery access in terms efficient transportation of product *to* a pipeline, not *from* a pipeline. We find neither argument compelling.

Actions of administrative agencies carry a rebuttable presumption of validity. When an administrative agency is authorized to adopt regulations, they are presumed valid. *See Barbury v. Duckwall Alco Stores, Inc.*, 42 Kan. App. 2d 693, 694, 215 P.3d 643 (2009). As the Kansas Supreme Court has explained,

"Interpretation of a statute is a question of law. Special rules apply, however, when considering whether an administrative agency erroneously interpreted or applied the law: The interpretation of a statute by an administrative agency charged with the responsibility of enforcing that statute is entitled to judicial deference. This deference is sometimes called the doctrine of operative construction... [I]f there is a rational basis for the agency's interpretation, it should be upheld..."

Coma Corp. v. Kansas Dept. of Labor, 154 P.2d 1080, 083 (Kan. 2007). It should be noted here, as well, that the regulation in question was promulgated by the Department of Commerce pursuant to express authority delegated to it by the

Kansas legislature and was adopted under the auspices of the Kansas Administrative Procedures Act (KAPA) subject to legislative oversight and public notice and comment requirements.

In light of the record before us, we find a rational basis supporting the Department of Commerce's interpretation of the Kansas Energy Development Act's refinery access requirement as expressed in K.A.R. 110-16-1(a). The Kansas legislature plainly requires only that refineries in Kansas have access to the subject pipeline. In common usage, the word "access" is defined as a "means of approaching" or the "act of approaching." WEBSTER'S II NEW COLLEGE DICTIONARY (1999). Access also can mean the "right to enter or use" or the "quality or state of being easy to approach or enter." *Id.* No authority has been offered to suggest that access implies a direct junction or immediate intersection, or that the word imports any degree of locational proximity. On the contrary, access generally is understood to exist even if only by means of indirect passage. Accordingly, if point A is reachable from point E, then access between the two points exists even if the only path between them is through points D, C and B.

In this case, by construing the statutory access requirement to include both direct and indirect access, the Department of Commerce merely rendered explicit that which was implied by the legislature through the statutory text. And, although technically written to address access in terms of product flows *from* refineries instead of *to* refineries, the regulation still comports with the rulemaking authority conferred by the legislature. As a logical extension of the Kansas Energy Development Act, the Department of Commerce regulation should be given appropriate deference by this court.

Based on the foregoing legal authorities as applied to the uncontroverted facts, this court finds the refinery access requirement of K.S.A. 79-32,223(d) is susceptible of but one reasonable meaning and is, therefore, unambiguous. The words used by the legislature plainly require only that there be access to the subject pipeline for refineries in Kansas. The statute requires no direct connection and no particular means of access. Nor does the statute require that access be established at any particular location or proximity to refineries in Kansas. If the legislative purpose had been to condition exemption on additional capital investment in delivery infrastructure, such as new lateral lines in Kansas, or if the legislature had intended that access to Kansas refineries be achieved through some particular means or location, the legislature could have readily written an exemption statute effectuating such purposes. *See, e.g., In re Derby Ref. Co.*, 17 Kan. App. 2d 377, 383, 838 P.2d 354 (1992) (Restrictive construction of exemption statute not appropriate where statutory definition of exempt property lacked specificity); *State v. City of*

Leavenworth, 279 Kan. 789, 796, 112 P.3d 131 (2005) (Restrictive construction of veteran's preference statute not appropriate where legislature used general, rather than limiting, statutory language.)

As codified, the words used by the legislature to define the pipeline exemption are broadly drawn to require access generally, without condition, limitation or restriction. In the absence of statutory language specifying how or where refineries in Kansas must access new pipelines crossing the state, it should be presumed the legislature contemplated that refineries in Kansas would gain access through commercially reasonable and practical means. According to the uncontroverted record, it would be wasteful and commercially unreasonable to construct new infrastructure, such as lateral delivery lines, connecting Kansas refineries to the Cushing Extension at points within the political boundaries of the state. Also uncontroverted is the fact that the existing infrastructure is adequate for current delivery capacity and that refineries in Kansas at no time contemplated having access by any other means. In short, refineries in Kansas are now able to obtain from the subject pipeline by commercially reasonable means new supplies of oil, supplies that had not been available to them before the pipeline was constructed.

Viewed in the context of industry realities, which are not in dispute, Keystone's interpretation of the exemption is consistent with the ordinary and plain meaning of statute and is in harmony with common sense and sound reason. Its interpretation also is consistent with the Department of Commerce's administrative construction as expressed through K.A.R. 110-16-1(a). In contrast, PVD's interpretation, which would require an indeterminate investment in new delivery infrastructure at points unknown within the state, calls for a reading of the statute that is both illusory and antithetical to the letter and spirit of the law.

Having found the pipeline exemption statute unambiguous and supportive of Keystone's interpretation, this court need not resort to legislative history in aid of statutory construction. Nevertheless, we note that the legislative documents supplied by the parties, if anything, militate in favor of Keystone's reading of the exemption statute.

Much is made of the fact that according to the documents provided, the refinery access requirement was a late addition to the legislative process. This fact alone, according to PVD, compels but one plausible conclusion—that the legislature intended for there to be some means of refinery access to the subject pipeline other than via infrastructure already in existence. Yet PVD itself notes that the goal of the Kansas Energy Development Act was to make the state of Kansas a major

energy processor. It strains credulity to suggest that the imposition of uncertain and commercially unreasonable conditions on applications for exemption of new pipelines crossing Kansas would advance that goal.

Perhaps most important, however, is what is absent from the legislative record. The parties have provided no evidence indicating that alternative delivery infrastructure plans were ever considered, or even introduced, during the legislative process. Thus, to the extent the various statements contained in the legislative record can be aggregated into a single, coherent public purpose, it seems most logical that the purpose of the refinery access requirement was to ensure pipeline accessibility to refineries in Kansas through commercially reasonable means and to leave implementation of that requirement to the sound judgment of industry under the supervision of the Department of Commerce.

Having considered the cross motions for summary judgment, along with the briefing and argument submitted in support thereof and in opposition thereto, and in light of the record as a whole, this court finds that complete summary judgment shall be and is hereby entered in favor of Keystone and against the director of property valuation. Keystone's application for property valuation exemption is granted.

Any refund due and owing the applicant shall be made pursuant to K.S.A. 79-213(k), which limits the refund to the year immediately preceding the year in which the application is filed in accordance with K.S.A. 79-213(a).

Any party to action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 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



See Attached Concurring Opinion
BRUCE F. LARKIN, CHIEF JUDGE


J. FRED KUBIK, JUDGE


TREVOR C. WOHLFORD, JUDGE


JOELENE R. ALLEN, SECRETARY

CONCURRING OPINION

I concur with the majority's decision to grant the applicant's request for tax exemption. However, I have serious concerns whether K.S.A. 79-32,223 effectuates the legislature's intended purpose.

As with any question of statutory interpretation, a Court seeks to discern legislative intent beginning with an examination of the statutory language at issue. *See Miami County Bd. of Com'rs v. Kanza Rail-Trails Conservancy, Inc.*, 292 Kan. 285, 320, 255 P.3d 1186 (2011). A cardinal canon of statutory construction is that a Court must presume that a legislature says in a statute what it means and means in a statute what it says. *Kansas Ass'n of Public Employees v. Public Employee Relations Bd.*, 13 Kan.App.2d 657, 668, 778 P.2d 377 (1985).

The Kansas Economic Development Act, passed by the 2006 Kansas legislature, and codified in K.S.A. 79-227 and 79-32,223, was specifically designed to provide incentives for the creation of new and the expansion of current energy related projects. For over a decade prior to the passage of this act, there were crude oil pipelines in operation connecting Kansas refineries to terminals in Cushing, Oklahoma. Therefore, in enacting K.S.A. 79-32,223, the Kansas legislature must have intended to incentivize pipeline access other than that which existed at the time the statute was promulgated. "Courts must presume that the legislature did not intend to enact useless or meaningless legislation." *Associated Wholesale Grocers, Inc. v. Americold Corp.*, 293 Kan. 633, 270 P.3d 1074, 1086 (2011). Moreover, I find even a cursory review of the legislative history of the Kansas Economic Development Act unremittingly supports such an interpretation.

Despite these reservations, I concur with the majority that K.S.A. 79-32,223 is clear and unambiguous. As such, an examination of legislative intent is both unneeded and legally improper. "When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be." *Martindale v. Robert T. Tenny, M.D., P.A.*, 250 Kan. 621, Syl ¶ 2, 829 P.2d 561 (1992). I, further, am confident that if the Kansas Economic Development Act, as codified in the Kansas statutes, has not properly communicated the legislature's will, the legislature can revise the statute to clarify its intention.



BRUCE F. LARKIN, CHIEF JUDGE

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. 2010-8538-PVX and any attachments thereto, was placed in the United States Mail, on this 13th day of April, 2012, addressed to:

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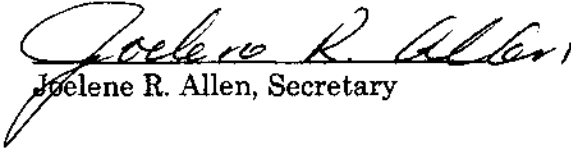
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary