

JETLAW, LLC®

ATTORNEYS & COUNSELORS

1020 16TH STREET NW SUITE 700 WASHINGTON, DC 20036
(202) 499-3834 WWW.JETLAW.COM

MEMORANDUM

CONFIDENTIAL AND ATTORNEY CLIENT
PRIVILEGED

To: Shawn McGrew
From: C. Edward Young, Esq., Of Counsel
Date: November 21, 2022
Re: K.S.A. 79-201r – The Strother Field Exemption

Summary

Strother Field engaged Jetlaw, LLC. to assist in the amendment of K.S.A. 79-201r, also known as the Strother Field exemption. The goal of an amendment of the Strother Field exemption is to clarify the status of all property owned by Strother Field and its cooperative entities that support the airport and its infrastructure as exempt from ad valorem tax.

Jetlaw suggests the following amendment to the existing language of K.S.A. 79-201r:

Amendment

AN ACT concerning property taxation on Strother Field Airport; amending K.S.A. 79-201r.

79-201r. Property exempt from taxation; Strother Field airport. For all taxable years commencing after December 31, 1991, the Strother field airport commission *and the political subdivisions comprising the Strother Field Airport Commission* shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state on property owned by it *and depicted on the Airport's Federally Approved Airport Layout Plan whether used for aviation related purposes, to promote aviation commerce or to provide revenue to operate all Strother Field components and activities.* ~~Prior to and on January 1, 1992.~~ All property taxes, including any penalties and interest accrued thereon, imposed upon any property herein described for all taxable years commencing prior to January 1, ~~1992-2023~~, are hereby declared to be cancelled but any such amounts paid in any such year shall not be refunded.

Background

In January of 1943, Strother Field opened with fanfare, including a dedication by the Governor. The cities of Arkansas City and Winfield cooperatively began the construction process for the airport in 1942. The cities leased the field to the U.S. Government at a reported rate of \$1 per year for 25 years. The government encouraged the acquisition of property around the airport to preserve the potential expansion opportunities of the airport. The airport was returned to civil use after World War II.

In 1991 and 1992, the Kansas legislature amended K.S.A. 79-201 to include sections q, r and s. In recent decisions of the Court of Tax Appeals and a 2011 decision of the Kansas Court of Appeals¹, the provisions of section q were applied to Strother Field, as opposed to the Strother Field exemption. Additionally, Strother Field took steps to secure the continuity of the Airport by purchasing adjacent property.

The language of the three sections is not identical. In fact, in section q there is a distinction between “for purposes not essential to the operation of an airport” and “purposes essential to the operation of an airport.” Section s refers to all property owned primarily “for aviation related purposes.” The Strother Field exemption language does not require airport purposes.

Discussion

Strother Field’s Unique Position

Airports receiving federal financial assistance are subject to grant assurances. Property owned by the airport cannot ordinarily be sold. This is particularly true of airports subject to the Federal Surplus Property Act. Any attempt to sell airport property can result in a mandatory reversion of the property to the federal government by the Federal Aviation Administration (FAA).² The grant assurances also require the airport to “maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.”³ Any ad valorem tax placed on the tenant reduces the amount of rent and other fees that the airport can charge without encouraging the tenant to relocate. Additionally, the grant assurances require the airport to “not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurance...”⁴ This includes protecting the airport from encroachment by incompatible land use.

The development of airport industrial property, on airport property, is more difficult due to these limitations. Through the fence operations, operations that depend on access to the runway and taxiway system of the airport, are not encouraged by the FAA. Through the fence operation complicate security, safety and revenue considerations.

In the current industrial park configuration, Strother Field, according to the 2016 Kansas Aviation Economic Impact Study, prepared by the Kansas Department of Transportation, generated \$1.784 billion in economic impact for the Kansas economy. This amount constitutes 47% of the economic impact of all Kansas general aviation airports and 20% of the overall economic impact of all airports. The total employment on the field is 1,543 with a payroll of \$154 million. The vibrant economic hub at Strother field exists because of the management of resources around the airport, whether essential to airport operations or simply due to the existence of the airport.

¹ In re Strother Field Airport, 46 Kan. App. 2d 316 (2011).

² See FAA Order 5190.6b Change 1 (2021).

³ FAA Grant Assurance 24 (April 2022).

⁴ FAA Grant Assurance 5.

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Strother Field's Competitive Disadvantage

The taxation of airport property varies from state to state. However, the approach used in Oklahoma and Missouri places Strother Field at a disadvantage. A 1989 decision by the Oklahoma Supreme Court exempts airport property owned by a subdivision of government from ad valorem property taxes.⁵ Any airport in Oklahoma can offer Strother Field tenants the opportunity to move across state lines and exempt the tenant from property taxes. Missouri law only taxes the possessory interest of an airport tenant. If the airport tenant does not possess any interest at the end of its lease, there is no taxable value. In addition, Missouri passed a law in 2008 that permits new airport tenants to construct new facilities on commercial service airports and incur no tax liability for the new facility.⁶ While Arkansas follows a similar use of the facility rule as Kansas, Nebraska does not assign a tax value to property under airport authority's "jurisdictions, control, possession, or supervision...."⁷ Iowa exempts some facilities if used as a fixed based operator,⁸ as does Florida.⁹ Pennsylvania grants tax immunity to airport property. The aviation industry is highly competitive. Creating inconvenience for Kansas aviation industry incentivizes those industries to look at other options.

The suggested language in the summary clarifies three points:

1. The joint ownership of Strother Field by Arkansas City and Winfield created minor issues in the interpretation of the statute in the past.
2. Reinforce the goal of the original Strother Field exemption to exempt all property commonly operated as Strother Field from ad valorem taxes. This is buttressed by the lack of an "airport purposes" limiting caveat in Section r.
3. The Strother Field exemption amendment as suggested is carefully circumscribed to property contained in the Airport Layout Plan. The Airport Layout Plan is the area surrounding the airport that is of greatest concern for the FAA.

Conclusion

The suggested amendment to 79-201r is approximately 42 words. It is an attempt to remove doubt that the Strother Field exemption applies to all property owned and operated as Strother Field.

⁵ ROCKWELL INT'L CORP. v. CLAY, 1989 OK 108 (1989).

⁶ RSMo 137.115.1. "The true value in money of any possessory interest in real property in subclass (3), where such real property is on or lies within the ultimate airport boundary as shown by a **federal airport layout plan**, as defined by 14 CFR 151.5, of a commercial airport having a FAR Part 139 certification and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property completed after January 1, 2008, and which are included in the above-mentioned possessory interest, regardless of the year in which such costs were incurred or whether such costs were considered in any prior year." Emphasis Added.

⁷ R.R.S. Neb. § 3-511 (2022).

⁸ See Iowa Code, Chapter 427, Property Exempt and Taxable.

⁹ See Fla. St. 196.012 (6).

