

Approved On: _____

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on March 2, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Groteweil

Committee staff present:

Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Gary Smith, Shawnee County Appraiser, testified on HB-3074 -- AN ACT relating to personal property taxation; concerning exemptions therefrom for hand tools used in the construction industry, business aircraft and household goods used for daycare purposes; concerning penalties imposed upon escaped personal property. (Attachment 1) Mr. Smith suggested that "associated tool box" be inserted on line 37 of section 1 to avoid Shawnee County having to send the tax bills for just one minor item. He also said that the bill as written will not cover Day Care Associations and may not cover other Day Care Operations such as foster care, pre-schools which have personal property, and day care in churches. Mr. Smith explained his Department's filing dates and penalty advances and answered questions from committee members.

Mr. Douglas Martin, Shawnee County Counselor, presented a statement showing property tax status of aircraft in Shawnee County on February 29, 1988. (Attachment 2) He discussed the major concerns raised by the Kansas Court of Appeals in the Godfrey Aviation case because it was held that any aircraft held in the name of a corporation (even if only one) would be eligible for exemption. Mr. Martin believes that if HB-3074 is passed as it is now written, more than 95% of all aircraft in the state would become exempt before the end of the year. He also called attention to the fact that the bill appears to be retroactive to the 1983 tax year. (Attachment 3) Mr. Martin also provided a copy of Kenneth Godfrey Aviation vs. Shawnee County. (Attachment 4)

Richard J. Morrissey, Director Bureau of Adult and Child Care, spoke as a proponent for HB-3074. He said that taxation of registered and licensed day care homes would inhibit the growth of new day care homes at a time when the availability of child care is most essential for working parents. (Attachment 5)

Representative Anthony Hensley spoke as a proponent for HB-3074 and presented testimony from several day care providers expressing their concern about the current interpretation in Shawnee County regarding the assessment of "commercial personal property" of daycare home providers. (Attachment 6) Representative Hensley believes that many providers will be driven underground unless the bill is passed.

Kharon Hunter, Editor and Board Member of Child Care Providers Coalition of Kansas and a child care provider for over twenty years, spoke as a proponent. (Attachment 7) She does not believe daycare providers should be asked to pay personal property taxes on household equipment that serves a two-fold purpose - family and daycare.

Diana Shirley, Small Wonder Day Care Home, also spoke as a proponent. She said that although equipment and facilities add quality to daycare programs, they do not necessarily aid earning potential. (Attachment 8) She emphasized that we all say we want the best care for our children, but too many settle for too little.

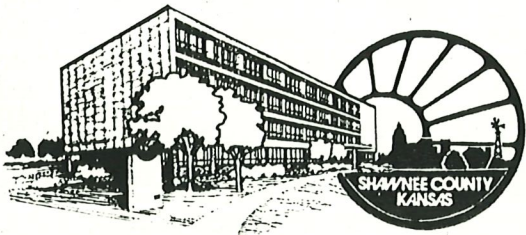
Mr. Jim DeHoff testified that the AFL and CIO also support passage of HB-3074.

Mr. Keith Farrar, Board of Tax Appeals, suggested that there should be new wording in the Hand Tool exemption. There was discussion and questions from committee members concerning previous Board of Tax Appeal rulings with respect to daycare exemptions. The committee noted several BOTA orders indicated that the Legislature had considered the entire question of exempting daycare in 1986, when in fact the Legislature had considered only the exemption for churches when the property was used for daycare. The committee noted the exemption issue for non-profit daycare centers is being considered in a separate bill; the issue before the committee in HB-3074 is limited to personal property used in home daycare operations.

Representative Gatlin moved, second by Representative Smith, to conceptually amend the bill to clarify that the exemption covers both licensed and registered home day care providers. The motion carried. Representative Wagnon moved, second by Representative Branson, to exempt tool boxes from the property tax. Motion carried. Representative Gatlin moved, second by Representative Shore, to report HB-3074 as amended favorably. Motion carried.

The minutes of the meeting of March 1, 1988 were approved. There being no further business, the meeting was adjourned.


Ed C. Rolfs, Chairman



Shawnee County
Office of County Appraiser

GARY M. SMITH ASA, CKA
APPRAISER

ROOM 102
291-4100

COURTHOUSE
TOPEKA, KANSAS 66603-3960

March 2, 1988

Rep. Ed Rolfs, Chairman
House Committee on Taxation

Chairman Rolfs - Honorable Members:

I would like to thank the committee for taking the time to address problems which are addressed in House Bill #3074.

New Section 1 (B)

I believe the language as used in Section B would exempt Hand Tools for the trades which were left out in the original statutes.

I would request the term and associated tool box be inserted on line 0037 to avoid Shawnee County having to send the tax bills for just one minor item.

New Section 3

1. The bill as written will not cover Day Care Associations. (That may be alright if the Humanitarian Bill passes.)
2. May not cover other Day Care operations.
 - a. Foster Care.
 - b. Pre-schools which have Personal Property.
 - c. Day Care in churches.

Section 4

The escaped taxation statute has been carefully worked out several years ago after the Payless Cashways problem which allowed under reporting with no method to recover lost tax revenue.

The system follows this procedure:

Filing Dates:

Feb. 28 Each 15 days penalty advances 10% to 50% after 75 days.

April 1 Each 15 days penalty advances 10% to 50% after 75 days.

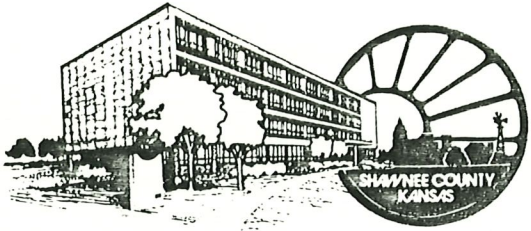
April 15 Each 15 days penalty advances 10% to 50% after 75 days.

The penalty remains at 50% until the following years filing date to give the taxpayer an opportunity as they prepare the following years tax to notify the Appraiser of the problem. Only if the error or under reporting by taxpayer is discovered by the Appraiser after one year does the 100% penalty apply. The taxpayer also may request the penalty be reduced by the Board of Tax Appeals.

Sincerely,

Gary M. Smith ASA, CKA
Shawnee County Appraiser

GMS/jw



Shawnee County Office of County Counselor

DOUGLAS F. MARTIN
County Counselor
JOSEPH W. ZIMA
First Asst. County Counselor
LINDA P. JEFFREY
Asst. County Counselor

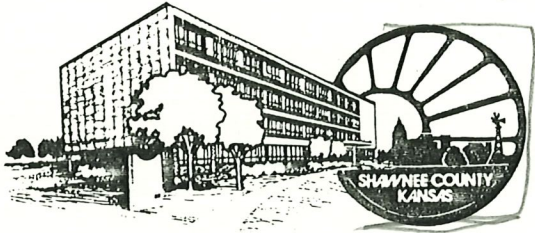
Shawnee County Courthouse
Room 203 • 200 E. 7th
Topeka, Kansas 66603-3922
(913) 291-4042

PROPERTY TAX STATUS OF AIRCRAFT IN SHAWNEE COUNTY, KANSAS ON FEBRUARY 29, 1988

Number of aircraft in Shawnee County, Kansas	-	190
Number of aircraft in Shawnee County that are exempt under 201k	-	100
Appraised value (actual market value) of aircraft in Shawnee Cty	-	\$11,673,160
Appraised value (actual market value) of aircraft exempt by 201k	-	\$10,431,395

Average appraised value of Aircraft presently exempt in Shawnee County by reason of K.S.A. 79-201k as it presently is written	-	\$104,431
Average appraised value of Aircraft presently being taxed in Shawnee County because their use is not exclusively "Business"	-	\$13,797

*** Numbers supplied by Shawnee County Appraiser



Shawnee County Office of County Counselor

DOUGLAS F. MARTIN
County Counselor
JOSEPH W. ZIMA
First Asst. County Counselor
LINDA P. JEFFREY
Asst. County Counselor

Shawnee County Courthouse
Room 203 • 200 E. 7th
Topeka, Kansas 66603-3922
(913) 291-4042

REMARKS BY SHAWNEE COUNTY COUNSELOR DOUG MARTIN REGARDING AIRCRAFT EXEMPTIONS
AS CONTAINED IN HOUSE BILL NO. 3074

March 2, 1988

1. One of the major concerns raised by the Kansas Court of Appeals in oral arguments in the Godfrey aviation case was that any aircraft held in the name of a corporation (even if only one) would be eligible for the tax exemption using the arguments of Godfrey and Smith even if the corporation only leased the aircraft to the owner of the corporation for recreational use. Thus, the Court held that the use of the lessee and the lessor had to be for business. There had to be more business use than just the leasing of aircraft. Otherwise, all aircraft would be eligible for tax exemption merely by being placed in the name of a corporation and being leased-back to the owner of the corporation.
2. The value figures which are provided to the committee reflect the tax status of aircraft in Shawnee County as they are presently on the tax rolls. I have asked Shawnee County Appraiser Gary Smith to provide me with the figures on his estimates as to what the figures will be after the Godfrey decision is taken into account, and also the figures that we would have if this bill, House Bill No. 3074 were to be enacted. I believe that the percentages of exempt aircraft will go down somewhat from the present 90% if we do not change the law. If in fact this Bill is passed, my opinion is that more than 95% of all aircraft in the state would become exempt before the end of the year, and close to 100% before very long.
3. Other concerns that this committee should take into consideration are that this bill appears to be retroactive to the 1983 tax year, which will cause some confusion in the administration of this bill if it becomes law.

KENNETH GODFREY AVIATION,
INC., Appellee,

v.

Gary SMITH, Shawnee County
Appraiser, Appellant.

and

William H. SMITH, Appellee,

v.

Gary SMITH, Shawnee County
Appraiser, Appellant.

No. 60290.

Court of Appeals of Kansas.

Dec. 17, 1987.

Board of Tax Appeals denied applications of owners of airplanes rented by air service business to general flying public for exemption from ad valorem taxes on airplanes, and airplane owners petitioned for judicial review. After cases were consolidated, the Shawnee District Court, Terry L. Bullock, J., reversed the BOTA's decision and held airplanes exempt from ad valorem taxes on ground they were used exclusively in conduct of business. County appraiser appealed. The Court of Appeals, Briscoe, J., held that for purposes of statute exempting from property taxes aircraft actually and regularly used exclusively in conduct of business or industry, airplanes rented by business to general flying public for use by renter for any purpose, business or personal, were not used exclusively for business, as some renters used airplanes for personal endeavors, although renters' use of airplanes for personal endeavors furthered rental business.

Reversed.

1. Statutes \S 219(10)

Interpretation of statute is question of law, and although Board of Tax Appeals' interpretation of tax exemption statute at issue should be given consideration and weight, final construction of statute rested with the Court of Appeals.

2. Taxation \S 204(2)

In questions involving tax exemptions, taxation is the rule and exemption is the exception; all doubts are to be resolved against exemption and in favor of taxation.

3. Taxation \S 203, 204(2)

Statutory provisions exempting property from taxation are to be strictly construed, and burden of establishing exemption from taxation is on the one claiming it.

4. Statutes \S 223.1

Where statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining rights and liabilities under the other.

5. Taxation \S 211

Question under tax exemption statute containing exclusive use language is not whether property is used partly, or even largely, for purposes stated in exemption provisions, but whether property is used exclusively for those purposes; phrase "used exclusively" in tax exemption statutes means that use made of the property sought to be exempted from taxation must be use only, solely, and purely for purposes stated as exempt, without participation in any other use.

6. Taxation \S 211

In determining whether property is exempt under tax exemption statute containing exclusive use language, Court of Appeals must consider not only use of property being made by the one claiming the exemption, but also all uses being made of the property.

7. Taxation \S 211

Under statute exempting from property taxes all aircraft actually and regularly used exclusively in conduct of business or industry, airplanes used by air service business that rented and chartered airplanes to general flying public for use by renter for any purpose, business or personal, were not tax exempt; renters' use of aircraft for personal endeavors made airplanes ineligible for tax exemption as they were not used exclusively for business, although renters' use of airplanes for personal en-

deavors furthered aircraft rental business.
K.S.A. 79-201k.

Syllabus by the Court

1. In questions involving tax exemptions, taxation is the rule and exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. Statutory provisions exempting property from taxation are to be strictly construed and the burden of establishing exemption from taxation is on the one claiming it.

2. When statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining the rights and liabilities under the other.

3. The phrase "used exclusively" in tax exemption statutes means that the use made of the property sought to be exempted from taxation must be used only, solely, and purely for the purposes stated, and without participation in any other use.

4. Under the facts of this case, it is held that, although the renters' use of the airplanes for personal endeavors furthers a business and thus the purpose of K.S.A. 79-201k, we are obligated under the "exclusive use" language of the statute to consider the renters' personal use as a disqualifying use under the statute.

Douglas F. Martin, Co. Counselor, Topeka, for appellant.

Alan F. Alderson of Alderson, Alderson & Montgomery, Topeka, for appellees.

Before DAVIS, P.J., and BRISCOE and SIX, JJ.

BRISCOE, Judge:

This is an appeal by the Shawnee County Appraiser from the district court's ruling that the airplanes owned by Kenneth Godfrey Aviation, Inc., and William H. Smith were exempt from ad valorem taxes under K.S.A. 79-201k.

Godfrey Aviation is an air service business with a fleet of eight airplanes. The company rents and charters the airplanes

to the general flying public for use by the renter for whatever purpose, be it business or personal.

William H. Smith owns one airplane which he leases to Godfrey Aviation, which it in turn rents to the general public. Godfrey Aviation earns a management fee from Smith and Smith receives a portion of the rental fees as income. Smith, a psychologist, also uses his airplane for business trips but he does not use it for personal trips.

The Board of Tax Appeals (BOTA) denied the applications of Godfrey Aviation and Smith for exemption from ad valorem taxes on their airplanes. Their motions for rehearing were also denied and they timely filed petitions for judicial review in the district court. Prior to the district court's ruling, the cases were consolidated. The district court reversed the BOTA's decision and held the airplanes exempt from ad valorem tax under K.S.A. 79-201k because they were used exclusively in the conduct of business.

The sole issue presented by this appeal is whether the owners' airplanes were used exclusively in the conduct of business, thereby entitling them to exemption from ad valorem tax under K.S.A. 79-201k.

K.S.A. 79-201k provides:

"(a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft

and the use of aircraft in business and industry is vital to the continued economic growth of the state.

"(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"First. For all taxable years commencing after December 31, 1982, all aircraft actually and regularly used exclusively in the conduct of a business or industry." Emphasis added.

Godfrey Aviation and Smith used their airplanes exclusively in the conduct of business. The only question is whether the renters' use of the airplanes for non-business purposes is to be considered in determining the exclusive nature of the use. The County claims that, because renters used the airplanes for non-business purposes, the airplanes were not being used exclusively in a business and thus did not qualify for exempt status under K.S.A. 79-201k. Godfrey Aviation and Smith claim their use of the airplanes alone is determinative of the right to an exemption.

[1] In the present case, the facts are not disputed. The only question is one of statutory construction. The interpretation of a statute is a question of law and, although the BOTA's interpretation of the statute in question should be given consideration and weight, the final construction of a statute rests with this court. *In re Tax Appeal of Cessna Employees' Flying Club*, 11 Kan.App.2d 378, 379, 721 P.2d 298 (1986).

[2, 3] In questions involving tax exemptions, several rules of statutory construction are applicable. Taxation is the rule, and exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. Statutory provisions exempting property from taxation are to be strictly construed and the burden of establishing exemption from taxation is on the one claiming it. *T-Bone Feeders, Inc. v. Martin*, 236 Kan. 641, 645-46, 693 P.2d 1187 (1985); *Cessna*, 11 Kan.App.2d at 380, 721 P.2d 298.

The owners contend that *Cessna* is controlling. We disagree. In that case, *Cessna* owned nine airplanes which it rented to members for private flying. The BOTA refused to declare such airplanes tax exempt under K.S.A. 79-201k because *Cessna* had failed to establish that it was an established business. Specifically, the BOTA concluded that, because of *Cessna*'s lack of profit-making motive, *Cessna*'s ownership of the airplanes did not constitute a business. The sole question on appeal was whether *Cessna*'s activities constituted a business which would entitle it to fall within the exemption in 79-201k. The paragraph including the statement of the issue reads as follows:

"In this case the facts are not disputed. Both sides agree that *Cessna* owns planes, services and maintains those planes, and rents them to its members on an hourly basis. There is no dispute over what *Cessna* does—the question is solely whether what *Cessna* does is a 'business' which would entitle it to fall within the statutory interpretation. [Citation omitted.]" 11 Kan.App.2d at 379, 721 P.2d 298.

The only issue decided in *Cessna* was whether the lessor's nonprofit organization was a business under K.S.A. 79-201k. Whether a renter's private use of an airplane would prohibit a business from exempting its airplanes from ad valorem taxation was not addressed.

[4, 5] As *Cessna* is not controlling, the issue presented is one of first impression. We are not, however, without any guidance from prior case law concerning this issue. Tax exemption statutes containing language similar to K.S.A. 79-201k have been interpreted by the Kansas courts. Where statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining the rights and liabilities under the other. *Shapiro v. Kansas Public Employees Retirement System*, 211 Kan. 452, 457, 507 P.2d 281 (1973). In interpreting other tax exemption statutes, the Kansas Supreme Court has held ownership is not the controlling factor; "exclusive use" is the test. *In re Board of*

Johnson County Comm'rs, 225 Kan. 517, 520, 592 P.2d 875 (1979). Furthermore, the question is not whether property is used partly or even largely for the purposes stated in the exemption provisions, but whether the property is used exclusively for those purposes. *In re Application of Int'l Bhd. of Boilermakers*, 242 Kan. —, — P.2d — (1987); *T-Bone Feeders*, 236 Kan. at 646, 693 P.2d 1187; *Johnson County Comm'rs*, 225 Kan. at 519, 592 P.2d 875; *Cessna*, 11 Kan.App.2d at 380, 721 P.2d 298.

[6] The phrase "used exclusively" in tax exemption statutes means that the use made of the property sought to be exempted from taxation must be used only, solely, and purely for the purposes stated, and without participation in any other use. *T-Bone Feeders*, 236 Kan. at 646, 693 P.2d 1187; *Johnson County Comm'rs*, 225 Kan. at 519, 592 P.2d 875; *Cessna*, 11 Kan.App.2d at 380, 721 P.2d 298. Contrary to the owners' contention, we must consider not only the use of the property being made by the one claiming the exemption, but also all uses being made of the property.

[7] In *Johnson County Comm'rs*, 225 Kan. 517, 592 P.2d 875, a for-profit corporation leased property to a nonprofit psychiatric hospital. The lessee was obligated to pay all property taxes. The lessee claimed the leased property was exempt from ad valorem taxes under K.S.A. 79-201b, which exempts all property "used exclusively for hospital purposes." The issue was whether the property was "used exclusively for hospital purposes." The court held the property was subject to ad valorem taxes, stating:

"The renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property." *Johnson County Comm'rs*, 225 Kan. at 523, 592 P.2d 875. Because one of the simultaneous uses of the property (renting for profit) was not an exempt use under the statute, the property was not exempt from ad valorem taxation.

In Farmers Co-op v. Kansas Bd. of Tax Appeals, 236 Kan. 632, 694 P.2d 462 (1985), the taxpayers owned farm machinery and equipment which they rented to farmers for use in farming operations. The taxpayers claimed such equipment was exempt from property tax under K.S.A. 1983 Supp. 79-201i and 79-201j, which provided that all farm equipment "used exclusively in farming or ranching operations" was exempt from property and ad valorem taxes. One issue on appeal was whether the leased equipment was used exclusively in farming and ranching. The court held the leased equipment was not used exclusively in farming or ranching operations and was not entitled to tax exemption. The court noted that, when a taxpayer rents its equipment to an individual farmer for use on his own fields, there are simultaneous uses being made of the equipment: "(1) by the farmer fertilizing his fields and (2) by the [taxpayer] collecting a rental fee for the use of the machinery." *Farmers Co-op*, 236 Kan. at 638, 694 P.2d 462. "Since one of the uses was not an exempted use, the property was not exempt from taxation.

Furthermore, in reaching its decision, the court in *Farmers Co-op* noted that, although the stated purpose of the statute was broad (to foster the growth and development of agricultural endeavors), the legislature restricted and limited the exemption to property used exclusively in farming and ranching operations. According to the court, the more limited phrase and the legislative purpose outlined in the statutes indicated the emphasis was on farming and ranching, implying an intent by the legislature to limit the exemption strictly to those who farm or ranch. Because of the restrictive language of the exemption statute, the court was unwilling to extend the statute's application to include those who rent farming and ranching equipment to farmers.

In the present case, the owners leased airplanes to individuals, who used the airplanes for non-business purposes. Two simultaneous uses were being made of the aircraft: (1) by the renters for non-business purposes, and (2) by the owners collecting a rental fee for the use of the airplanes, both

of which must be considered in determining the availability of the exemption statute. Since the airplanes are exempt from taxation only if used in a business, the renters' use for non-business purposes makes the property ineligible for tax exemption under K.S.A. 79-201k because the airplanes are not used exclusively for business.

In addition, although the stated legislative purpose of K.S.A. 79-201k is broad, the exemption itself is limited to airplanes used in a business and does not exempt from taxation airplanes in general. The more restrictive language used in the exemption portions of the statute implies an intent by the legislature to limit the exemption strictly to those who use such property in a business. Since the statute restricts application of the exemption to those cases where property is used exclusively in a business, it is not for the courts to expand the statute's application to those cases where the property is used in part for business and in part for non-business activities.

Godfrey Aviation and Smith contend that, because their business profited from the renters' use of the airplanes, the purpose of the statute (the promotion of business) was fulfilled. A similar argument was rejected in *Stahl v. Educational Assoc'n.*, 54 Kan. 542, 38 P. 796 (1895). In that case, an educational association leased a house to a third party as a personal residence. The association used the proceeds from the rental for educational purposes and claimed the house was exempt.

The association claimed that, although the house itself was not used solely for education, the rents were applied exclusively for the purpose of education. The court held the property was not exempt from taxation because it was not used exclusively for education and it was being used to earn a profit. Even though the nonexempt use (renting) furthered the exempt use (education) by generating funds for educational use, the court still had to consider both uses of the property. Since renting for profit was not an exempted use, the property was taxable.

In the present case, although the renters' use of the airplanes for personal endeavors furthers a business and thus furthers the purpose of K.S.A. 79-201k, we are obligated under the "exclusive use" language of the statute to consider the renters' personal use as a disqualifying use under the statute. This construction is further bolstered by the statute's requirement that the airplanes must be "actually and regularly used exclusively in the conduct of a business or industry." The owners' airplanes in this case are not exempt from ad valorem taxation.

Reversed.



Th
M
JUD
INC
et :

S
F
broug
for br
proces
good
employ
cial D
Mark
Emple
preme
band i
former
initial
could
contra
interes
At

1. Mas
Fo
quired
when
employ
ee's h
home
where
and wh
ration,
ment o
2. Mas
Fo
stantia
contrac
approx
to do s
and co



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to

House Committee on Taxation

by

The Kansas Department of Health and Environment

H B 3074

Background

Taxation of registered and licensed day care homes would inhibit the growth of new day care homes at a time when the availability of child care is most essential for working parents. Some day care home providers may opt to not be registered or licensed. Operating unregulated child care would provide less visibility as a means of avoiding taxation. A proliferation of unregulated day care homes would not ensure basic health and safety standards for children in out-of-home care.

Taxation of day care homes could affect 3,296 registered family day care homes and 2,264 licensed day care homes statewide. In Shawnee County, there are 77 registered day care homes and 395 licensed day care homes.

Recommendations

We recommend passage of H.B. 3074.

Presented by: Richard J. Morrissey, Director
Bureau of Adult and Child Care
Kansas Department of Health and Environment
March 2, 1988

Patrice Pomeroy
1424 SW 31st
Topeka, KS 66611
February 23, 1988

Representative Anthony Hensley
Room 278 West
State Capitol
Topeka, Kansas 66612

Dear Rep. Hensley:

I am writing in regard to the recent effort by the county to collect personal property taxes from home day-care providers and the effort the legislature is making to address changes in the law.

I am a professional state employee, with two children, ages 2 and 6, who currently receive day care in a home setting environment. I chose my day care carefully to provide a safe, loving and learning situation for my two daughters. I also took into consideration the proximity to my home and the location of the school where my eldest daughter attends kindergarten. I currently spend about 1/3 of my take home income on day care. Even with my husband and myself working, our budget cannot absorb much more expense than we currently pay out. As an example, our property taxes went up this year, gas and electric bills continue to rise and the state health insurance premium increased on Jan.1.

My concern is with taxing a day care, with that cost eventually past on to the consumer --ME. I can't expect my day care to absorb the cost and know that additional expenses to her will result in a rise in costs to me.

The legislature is currently addressing a measure which will allow state employees to exclude from their wages payments for child day care, resulting in lower taxes because taxable gross salary would be smaller. This is the first positive approach the state has taken to giving working parents some sort of break when paying for day care. Now the county is going to tax the home day cares and the costs will rise for the consumer and no one saves in the end.

I don't believe home day cares should be classified as a business. They provide a service to me. A service that allows me to work, be a productive member of this community, pay taxes and support the tax base for the city of Topeka. How much money can actually be collected from these individuals that won't be offset by administrative costs, paperwork, manpower and enforcement?

Safe, reasonable and convenient day care is a concern to every working parent. It is also a national, state and local concern that has not been addressed in the past and to date, been virtually ignored. With the number of mothers with small children now in the workforce, it is an issue that can no longer be denied. I take my stand now so that when my daughters are grown and have their own children, maybe they won't face the problems I have finding good, quality day care.

I urge the legislature to address this issue of home day cares and keep them off the tax rolls.

Sincerely,

Patrice Pomeroy

Patrice Pomeroy

cc: Commission Chairman Eric Rucker
Senator Alicia Salisbury
Senator Jeanne Hoferer

2836 Burnett
Topeka, Kansas 66614
February 25, 1988

Anthony Hensley
Statehouse, Room 278 West
Topeka, Kansas 66612

Dear Mr. Hensley:

I am writing in regard to your public plea for comments concerning taxation of home day-care providers. Although I haven't had the opportunity to read the taxation laws I feel the county is probably justified in taxing certain property in day-care homes. The problem arises when deciding which and what percentage of personal property is taxed. For example taxing stoves in family homes doesn't take into consideration that 70% of the cooking done in my home is after day-care hours for the benefit of my family. On the opposite side, I was told by an employee of the appraiser's office that they didn't wish to tax our television because it was not required in a day-care even though it's used for 5-10 hours a week by day-care children. I doubt that any other business is told not to include an item in their inventory on the appraisal sheet because it's not a "requirement" to be in their type of work!

Please be aware that any type and amount of additional taxation on day-care homes will encourage ever increasing numbers of people operating day-care homes to not obtain licenses or go "underground". Also there is the possibility that having to pay commercial property taxes will put us in danger of having to be zoned commercially rather than in a residential district as most of us are. The main issue at the March 1 public hearing should be does this county want quality care for the children of working parents and do they want these parents to have a choice between commercial institutions and loving family homes!

Sincerely yours,



Annette Chavez
Licensed home provider

February 22, 1988

Representative Anthony Hensley
State Capitol Bldg.
Topeka, Kansas 66612

RE:Commercial Property Tax on Home Day Care Providers

Dear Representative Hensley:

On February 17, Shawnee County home day care providers received letters notifying them of assessment of commercial personal property tax on all items used for day care. This includes household appliances and furniture (primarily family owned items, but also used by day care children). While this is being enforced only in Shawnee Co. at this time, it could conceivably be assessed statewide (implementing State Law KSA-79-301).

It is inappropriate for childcare providers' taxes to be based on equipment and materials. Materials, equipment and facilities add quality to our programs and aid the development of children we care for. They do not necessarily aid earning potential. It is illogical to compare home daycare with other homebased businesses. The parameters of a daycare provider's income are limited by government regulations. The income potential for other businesses is limited by the owner's initiative and facilities. It is unconscionable that providers offering only custodial care with maximum enrollments would be taxed less than those with quality environments.

Providers face bitter choices, including closing daycares, providing unlicensed (untaxed) care, raising fees, and ceasing to offer superior programs. Providers who offer infant/toddler care already find it difficult to make it financially successful due to the lower child-caregiver ratio. This law additionally discourages providers from offering infant/toddler care. Any of these choices made by providers will further limit the already strained recourses for parents desperate for excellent childcare. Many will simply be priced out of the childcare market and be forced to quit their jobs or allow young children to stay alone or minimally supervised.

In an age when the care of our children is a major issue, at a time when the need for quality care is a necessity all too often unattainable; this form of taxation by Shawnee county and the State is a deterrent to quality child care. Who will be motivated to buy or make materials to enhance children's growth when we not only have to pay initially to acquire them but pay yearly to keep them. Even gifts received from clients that become part of the environment would be subject to tax.

Perhaps the most ludicrous aspect of the law is the notion that we should pay to keep common household appliances and furniture. The children play on our carpets and lawns and look at our decorations, wallpaper and paint. Should we be taxed for those, too?

If allowed to remain on the books, the ramifications of this law will reach far beyond the simple collection of a tax from a business. It will affect the entire economy of the working class. We all say we want the best care for our children, but too many settle for too little. Let's put our money where our mouths are and support providers offering excellent environments rather than tax them more than those with no motivation to provide good materials and equipment.

Sincerely,



Diana Shirley
2819 Engler Ct.
Topeka, Ks. 66614
(913) 273-2968

February 22, 1988

Representative Anthony Hensley
State Capitol Bldg.
Topeka, Kansas 66612

RE: KSA 79-301

Dear Representative Hensley:

As a day care home provider with a BS in Early Childhood Education, I am very concerned about the current interpretation in Shawnee County of KSA 79-301, regarding tax assessment of what is being referred to as "commercial personal property" of day care home providers. The ramifications of this interpretation are far reaching.

Many day care home providers will decide that the additional paperwork and increased taxes assessed to their business are too much and will quit providing child care altogether. There is already a shortage of child care in Topeka and this can only make matters worse.

Day care providers who serve smaller numbers of children (such as those who primarily care for infants and toddlers) will be most penalized by this type of taxation. They already make significantly less income, due to the few children they are able to serve. Their personal property, however, would amount to approximately the same value as that of those serving larger populations. Infant and toddler care is already in extremely short supply. Again, this taxation can only make matters worse.

This taxation encourages one to offer mere custodial care in place of quality care of children. After all, the more equipment and supplies used with the children, the greater one would be taxed year after year.

The additional taxation will encourage the operation of unlicensed homes, thus avoiding commercial personal property tax and income tax. Not only would that decrease the state's revenue, but would put our children at risk to receive less than adequate care.

Many day care operators who choose to remain in business will be forced to raise their rates. This will be particularly difficult for single parent families to pay. It is likely that some will choose to leave children at home unattended.

The letter sent by the county appraiser's office states that I, as a daycare provider, am to be taxed at the full value of all items shared by my business and my home (i.e., my refrigerator, stove, my own child's high chair, etc.) This makes little sense as I am allowed to count only a small percentage of the cost of these items as business expenses.

As is often the case, our children will suffer most from the effects of this government action. When will we learn that our children are our most important investment in the future? Considering the move in recent years to improve the quality of child care, this taxation would result in a giant step backwards.

I trust that you will take immediate action to rectify this situation .

Thank you for your help.
Sincerely,



Janet Degenhardt
4130 SW 33rd Terrace
Topeka, Kansas 66614

February 22, 1988

To Whom It May Concern:

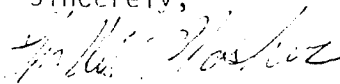
I have been a Day Care Provider for 14 years. I have made an effort to educate myself and be involved in upgrading Home Day Care by teaching KCCTO classes and participating in the Day Care Coalition from its conception.

I meet a large number of providers and know most providers are striving to do what is expected and more. I would hope more of an effort would go to the regulation of the nonlicensed rather than the constant harassment of the provider trying to do her best.

I too am concerned of the recent tax of the Day Care Provider. This is one more item to frustrate the provider in her main duties caring for children. The Home Day Care Provider is governed by State, County and City. This does not give her the rights of a business. The provider can not even exhibit a sign in her yard. She is considered a business for the convenience of tax, but not to enlarge her enrollment or financial situation. She has paid for a license, but does not receive anyone to represent her.

I request to be regulated, but not ruled.

Sincerely,



Phyllis Mosher
421 Polk
Topeka, KS 66604

File # 31 1986

To Whom it may concern,

I have recently been relicensed for my 17th year in Day Care. I have willingly met all the requirements required by governing laws.

When I chose this as my profession 17 years ago to supplement our family income, it was also because I loved children and wanted to be of service to others. It has now become rather than a joy of giving good service, a dread of the day you may receive a drop in visit from day care officials which usually consists of unnecessary harassment.

It seems inappropriate that an anonymous caller can call in a complaint for child abuse or any reason at all and you are immediately under investigation.

Now we are being asked to pay tapes on any items in our homes which are used in the care of our day care children. It has also been used by my own children and my grandchildren.

I'm sure there are some who do not follow and mistreat children, but I believe most providers are striving to give good care and abide by reasonable regulations. Some good providers are getting out because of unreasonable pressures that are being exerted. It seems to me that it would be far better to put pressure on those who are providing day care services without the licensing or registration procedures, than the harassing of those who are abiding by the law.

Please take whatever action you are able to protect Day Care Providers.

Thank you, Beverly Parker

February 25, 1988

Anthony Gensley
58th District
2226 Virginia Avenue
Topeka, Kansas 66605-1357

Dear Mr. Gensley:

My child attends day care in a personal home in Shawnee County. He receives very excellent care and the provider has spent considerable money to comply with day care guidelines).

I feel that taxation of day care providers personal property would not be a fair tax, because of the reasons you have stated. They work in their own home and should not have to pay taxes on what is used for their own families.

We will loose many good providers if this tax is passed.

Sincerely,

Ann Arnold





Legislators:

March 1, 1988

Regarding in-home day care tax issue:

I'm Kharon Hunter and have been a licensed family day care provider for over 20 years. I'm Editor & Board Member of Child Care Providers Coalition of Kansas, Board & Day Care Committee Member and Trainer of KCCTO, Kansas Child Care Training Opportunities.

Currently Shawnee County has about 500 in-home child care providers; Kansas has a total of approximately 5,500 licensed & registered providers. According to the 1987 National Family Day Care Licensing Study by the Children's Foundation, there are 198,344 regulated providers in the U.S., which is a 22½% increase from 1983. I did not find any state that requires in-home child care providers to pay personal property tax.

I help give the orientation for new home providers in Shawnee County. It's been easy to promote family day care because of the many advantages from working a small business out of our home, including the allowed income tax deductions for direct business expenses and a percent deduction for the shared household items. When I buy that couch or tricycle, I justify the cost by knowing:

1. its at least partly an income tax deduction
2. that the family members can use it
3. and the merchandise will help me, give better service to my day care clients

Kansas home day care regulations do not require me to start business with a long list of special furnishings, toys or supplies. But I learned very quickly that having sufficient and sturdy equipment does make a difference when working with children...and now the more I buy the more I'll be taxed. Shawnee County Health Department requires providers to provide program/activities and now those supplies will be taxed. Professionalism of a provider, is partly identified by the atmosphere we develop in our home facility by having sufficient household furnishings, toys and supplies. I do not want or think I should be asked to pay personal property tax on household furnishings and equipment that is for a two-fold purpose - family & day care!!

I can not believe that the processing and bookkeeping cost of an appraisal, would be offset by the increase of personal property tax revenues. Please exempt home day care providers!!!!

Kharon Hunter

KANSAS ASSOCIATION FOR THE EDUCATION OF YOUNG CHILDREN

2111 Kasold Suite E104
Post Office Box 3661
Lawrence, Kansas 66046-0661
(913) 749-5167

Christopher S. Edmonds
Public Policy Coordinator

**STATEMENT OF
CHRISTOPHER S. EDMONDS
DIRECTOR OF PUBLIC POLICY
KANSAS ASSOCIATION FOR THE EDUCATION OF YOUNG CHILDREN**

**BEFORE THE HOUSE COMMITTEE ON TAXATION
CONCERNING CHILD CARE PROPERTY TAX EXEMPTION**

Mr. Chairman, Members of the Committee:

I appreciate this opportunity to appear before you. My name is Christopher S. Edmonds. I am the director of public policy for the Kansas Association for the Education of Young Children. Our association represents more than 1,000 day care professionals in the state of Kansas. Our membership includes a broad spectrum of providers -- public and private, in-home as well as center-based child care.

As we have stated on past occasions, we support legislative efforts to provide clear direction to county tax appraisers in the area of property tax exemption for day care providers. We believe it is the intent of past legislative efforts to exempt from property taxation many human service organizations, including day care providers. While we understand the actions of county tax appraisers, we do not believe the Kansas legislature deliberately signaled tacit approval for the taxation of personal property of home day care providers.

As indicated at a public hearing held by the Shawnee County legislative delegation last evening, subjecting home day-care providers to personal property taxation would threaten many day care providers existence and cause drastic cutbacks in services offered by remaining facilities. As the Kansas legislature considers alternatives to the current welfare system and as the young child population continues to increase any move toward property taxation of home day care facilities will only lead to severe repercussions on the availability, affordability, and quality of child care programs in the state of Kansas.

The Kansas Association for the Education of Young Children feels there is widespread public support for this legislation. Initially, we need only point to the large number of people appearing before the Shawnee County legislative delegation last evening. Similarly, a recent survey conducted by the Daniel Yankelovich Group for the American Federation of State, County, and Municipal Employees (AFSCME) indicated that seventy-one percent (71%) of the parents surveyed agreed that local, state, and federal governments should develop policies that would make child care more affordable and available to all sectors of society. This would seem to include public policy creating favorable tax laws for day care operations.

It is the position of the Kansas Association for the Education of Young Children that the Kansas legislature should act presently to provide a clear exemption for human service organizations such as home day care facilities. We support your favorable action on this crucial legislation.

Written Testimony Only



Legislators:

March 1, 1988

Regarding in-home day care tax issue:

I'm Kharon Hunter and have been a licensed family day care provider for over 20 years. I'm Editor & Board Member of Child Care Providers Coalition of Kansas, Board & Day Care Committee Member and Trainer of KCCTO, Kansas Child Care Training Opportunities.

Currently Shawnee County has about 500 in-home child care providers; Kansas has a total of approximately 5,500 licensed & registered providers. According to the 1987 National Family Day Care Licensing Study by the Children's Foundation, there are 198,344 regulated providers in the U.S., which is a 22½% increase from 1983. I did not find any state that requires in-home child care providers to pay personal property tax.

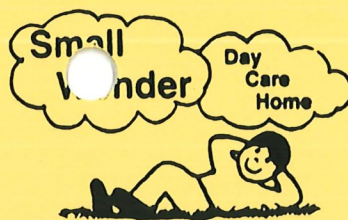
I help give the orientation for new home providers in Shawnee County. It's been easy to promote family day care because of the many advantages from working a small business out of our home, including the allowed income tax deductions for direct business expenses and a percent deduction for the shared household items. When I buy that couch or tricycle, I justify the cost by knowing:

1. its at least partly an income tax deduction
2. that the family members can use it
3. and the merchandise will help me, give better service to my day care clients

Kansas home day care regulations do not require me to start business with a long list of special furnishings, toys or supplies. But I learned very quickly that having sufficient and sturdy equipment does make a difference when working with children...and now the more I buy the more I'll be taxed. Shawnee County Health Department requires providers to provide program/activities and now those supplies will be taxed. Professionalism of a provider, is partly identified by the atmosphere we develop in our home facility by having sufficient household furnishings, toys and supplies. I do not want or think I should be asked to pay personal property tax on household furnishings and equipment that is for a two-fold purpose - family & day care!!

I can not believe that the processing and bookkeeping cost of an appraisal, would be offset by the increase of personal property tax revenues. Please exempt home day care providers!!!!

Kharon Hunter



2819 Engler Ct.
Topeka, KS 66614
(913) 273-2968

Diana Shirley
BSE/Early Childhood
MS/Special Education

In the 1980's child care is an issue at the forefront of the American consciousness. Legislation has been recently introduced at state and national levels to financially support the improvement of child care. In an era in which there are fewer families with an at home parent, there must be sensitivity to the reality that others are helping to shape those children's lives. According to the U.S. Dept. of Labor, 50% of mothers with infants under 1 year old are working outside the home. They project that by the year 1990, 2/3 of all preschool children will have mothers in the workforce. However, it is also a time of increased fiscal awareness and many fine programs are sacrificed to the national deficit. If found to be unrealistic to support child care issues financially, let us at least not discourage quality child care by burdening providers who use their family budgets to create enriched environments for children.

It is inappropriate for child care providers' taxes to be based on equipment and materials. Materials, equipment and facilities add quality to our programs and aid the development of children we care for. They do NOT necessarily aid earning potential. It is illogical to compare home daycare with other homebased businesses. The parameters of a daycare provider's income are limited by government regulations. The income potential for other businesses is limited only by the owner's initiative, facilities and market for his service. It is unconscionable that providers offering only custodial care with maximum enrollments would be taxed less than those with quality environments.

Providers face bitter choices, including closing day cares, providing unlicensed (thereby untaxed care), raising fees and ceasing to offer superior programs. Providers offering infant\toddler care already find it difficult to make it financially successful, due to the lower child-caregiver ratio. This law additionally discourages providers from offering infant\toddler care. Any of these choices made by providers will further limit the already strained recourses for parents desperate for excellent childcare. Many will simply be priced out of the childcare market and be forced to quit their jobs or allow young children to stay alone or minimally supervised.

In an age when the care of our children is a major issue, at a time when the need for quality care is a necessity all too often unattainable; this form of taxation by Shawnee county and the State is a deterrent to quality child care. According to this interpretation, everything used in caring for children, would be taxable, so even gifts that become part of the program would be taxable. Further, the motivation to buy or make materials to enhance children's growth will be reduced when providers not only have to pay initially to acquire them but pay yearly to keep them.

The earning capacity of a caregiver who creates an enriched environment for children is no greater than that of one offering mere custodial care. However, the learning capacities of the children they care for will differ. Children learn every moment of every day, positively and negatively. When I started in daycare and would tell someone that I taught infants in my home, they would look at me strangely and say, "Oh?... and WHAT do you TEACH them?" Well.. You teach them to learn and to love by showing them that you love them and are interested in them. You teach them that they are important by doing many activities with them, thereby developing their self-concept. When self-concept is no longer the child's major focus, incidental learning in other areas is more likely to occur. Love is priceless but materials for the activities do have a monetary value. Conversely, you teach a child he is NOT important by seldom enhancing his play experiences, or by ignoring him. He learns apathy and how to get attention inappropriately. Children learn what they live. If they are deprived of an emotionally and intellectually stimulation environment, they will find ways to occupy themselves. Quite often, they find socially inappropriate ways. I saw the effects of this kind of environment many times when I taught children with behavior problems. Therefore, while you may not improve your income by providing a superior environment, you will improve the lives of children.

If it remains with us, the ramifications of this law will reach far beyond the simple collection of a tax from a business. It will affect the entire economy of the working class. We all say we want the best care for our children, but too many settle for too little. Let us hope that by the year 2000, quality childcare will not be an issue to fight for, but a given.

Diana Shirley