

Approved 3-2-90
Date

MINUTES OF THE Senate COMMITTEE ON Economic Development

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m./p.m. on February 27, 1990 in room 123-S of the Capitol.

All members were present except:
Senator McClure

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Kansas Legislative Research Dept.
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Chairman Kerr called the meeting to order and announced continued discussion and possible action on S.B. 438.

Senate Bill 438 amends laws on venture capital companies to accelerate time guidelines for continued certification of companies and to prohibit venture capitalists from owning an equity interest in or a debt instrument of a business in which the venture capital company has invested funds.

After considerable committee discussion, Chairman Kerr offered language for subsection (g) as follows: "At the time of an initial investment by a certified Kansas Venture Capital Company, no investors in that certified Kansas venture capital company shall own a majority equity interest in the business in which the venture capital company is investing."

Senator Karr made a motion to amend by adopting stated language. Senator Winter seconded. Motion carried.

Attachment #1 was submitted by Al Hack. It is also suggested amendments for language in S.B. 438. The amendment suggests the existing 25% tax credit be applied to premium and privilege tax of investors in certified venture capital companies.

Senator Francisco made a motion to adopt amendments as listed, (Att. 1) Senator Vidricksen seconded. Motion carried.

Senator Karr made a motion to report S.B. 438 favorably as amended. Senator Vidricksen seconded. Motion carried.

COMMITTEE DISCUSSION ON SENATE BILL 440.

Senate Bill 440 puts limitations on authority to grant property tax exemptions pursuant to section 13 of article 11 of the constitution. Attachment 2 is a letter submitted by Senator Winter from David Cunningham, Board of Tax Appeals. Excerpts from the letter state that the Board has determined that property being leased is not eligible for exemption because leasing is not one of the stated purposes for which an exemption may be granted. Also, with respect to moves within the same community, a business' existing equipment cannot be exempted if the business is relocating within the same community. Another community could offer them a full exemption on all of their property.

Senator Winter moved to conceptually amend S.B. 440 to address the problem and have language drawn to correct and provide that an exemption is allowed even though the owner is leasing the equipment. The amendment would also include real estate. Senator Salisbury seconded. Motion to amend carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Economic Development,
room 123-S Statehouse, at 8:00 a.m./~~p.m.~~ on February 27, 1990

Senator Winter made a motion to accept the minutes of the February 20th, 21st and 22nd meetings. Senator Francisco seconded. Meeting adjourned.

SUGGESTED LANGUAGE CHANGE

SENATE BILL NO. 101

SECTION 1. (a)

"K.S.A. 1988 Supp. 74-8304 is hereby amended to read as follows: 74-8304. (a) There shall be allowed as a credit against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer and against the tax imposed by K.S.A. 40-252, and amendments thereto or K.S.A. 40-2801, and amendments thereto, on insurance companies for a cash investment in a certified Kansas venture capital company in an amount equal to 25% of such taxpayer's cash investment in any such company in the taxable year in which such investment is made and the taxable years following such taxable year until the total amount of the credit is use. The amount by which that portion of the credit allowed by this section exceeds the taxpayer's liability in any one taxable year may be carried forward until the total amount of the credit is used. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership."



BOARD OF TAX APPEALS

Keith Farrar, Chairman

Docking State Office Building, 10th Floor
Topeka, Kansas 66612-1582
AC-913 296-2388

Victor M. Elliott, Member
Conrad Miller, Jr., Member
Charles F. Laird, Member
Maybelle Mertz, Member

February 26, 1990

Senator Wint Winter
120-S State Capitol Building
Topeka, Kansas 66612

Re: Economic Development
Exemptions Pursuant to
Article 11, Section 13
of the Kansas Constitution

Dear Senator Winter:

Pursuant to your request I am writing to provide some general comments regarding economic development exemptions.

Initially, some general comments. As you know, the Board of Tax Appeals does not review the policy questions surrounding a city's or county's decision to grant an economic development exemption. The Board confines itself to a legal determination of whether the entity qualifies under the provisions of the constitutional amendment. I raise this point in part, to respond to some suggestions that cities or counties be given absolute authority to grant exemptions. The Board believes that would be unwise inasmuch as the local governing bodies are not necessarily examining the strict legal qualifications of the amendment, but rather, the potential economic benefits to the community. Having a legal review of the proposed exemption insures that the provisions of the constitutional exemption are upheld. I have enclosed a copy of a case which is an excellent example of a situation where a city believed the entity qualified for exemption but the Board determined it did not meet the strict standards of the amendment. Furthermore, if cities are given absolute authority to exempt property without the Board's review, there will be no uniformity throughout the state with respect to what is or is not a qualifying use. The Board would urge careful consideration before venturing into this area.

You had requested that I specifically address the issues of leasing versus ownership and the ability or inability of a business to move within the same community and qualify for the exemption.

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With respect to leasing, the Board has determined that property being leased is not eligible for exemption because leasing is not one of the stated purposes for which an exempti

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enclosed case, Board of County Commissioners of Wyandotte County v. Kansas Avenue Properties, Case No. 63,471 (February 14, 1990) the Kansas Supreme Court upheld the Board's decision denying an exemption where property was being leased. In that case, a developer had constructed light manufacturing and warehousing space and rented it to companies which were arguably utilizing the premises for qualifying purposes. Since the ultimate use of the premises was for manufacturing or storage, the owner (developer) requested an exemption pursuant to Article 11, Section 13. The Board cited In Re Board of Johnson County Commissioners, 225 Kan. 517, 592 P.2d 875 (1979) for the premise that in order to qualify for exemption all uses must be for the exempt purpose or the exemption must be denied. In the Kansas Avenue Properties case the owner's use, i.e. leasing, was not a qualifying use; therefore the exemption was denied. Kansas Avenue Properties appealed the case contending that only the ultimate use by the lessee was relevant and prevailed at the District Court level. The Supreme Court reversed the District Court.

With respect to equipment, or real estate for that matter, owned by a principal shareholder or a parent corporation and leased, the Board has determined that the property does not qualify for exemption. The Kansas Avenue Properties case is squarely on point. Whether a shareholder or a parent corporation owns and leases the property to another corporation, the fact remains there is a lease or rental use that does not qualify. Leasing is simply not one of the enumerated or qualifying uses for the economic development exemption. Finally, the Board has held that a lease purchase is acceptable so long as the option to purchase is for a nominal amount and the lease term does not exceed the useful life of the property being leased. In other words, a straight lease does not qualify but an appropriate lease purchase agreement may well satisfy the requirements for exemption. I believe, and have communicated to the Board, that a strict construction of the exemption would not allow even a lease purchase; however, the Board has determined that if there is a bona fide lease purchase agreement and all other criteria are met, an exemption will be granted.

→ { If the Legislature were to determine that leased property should be exempted in the economic development area, a separate statute could be enacted allowing an exemption for leased property. As you are aware, constitutional exemptions can be broadened, but cannot be typically narrowed; however, this constitutional amendment is the exception to the rule against narrowing a constitutional exemption since there is specific language that allows it. In any event, a separate statute could be enacted which would allow for an exemption in this situation. In the last legislative session such an attempt was made but it was not successful.

② With respect to moves within the same community, you are correct that a businesses' existing equipment cannot be exempted if the business relocating within the same community. The new structure or any additional equipment acquired in the process of an expansion can qualify for exemption, but any existing equipment does not fit the

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strict criteria of the amendment. As you have correctly pointed out, this places some businesses in a disadvantageous position because they cannot move within the same community but another community can offer them a full exemption on all of their property if they relocate. I am not sure there is an easy way to address this particular situation other than to broaden the exemption to allow existing equipment to be exempted if for example additional employees are hired. You are probably in a better position to address some of the criteria for this type of exemption than I. The basis of the Board's decision is that existing property is not part of an expansion to an existing business, therefore, only the new, larger building and new equipment would qualify so long as new jobs are created. I indicated a larger building and that is generally the case although it may simply be a building of similar size but of different construction to facilitate the expanded operation.

If you have any further questions, I would be happy to visit with you further.

Sincerely,



David C. Cunningham
Attorney & Secretary

DCC/ks