

SB 138 - Strother Field Exemption – Testimony of C. Edward Young, Esq. Jetlaw, LLC representing Strother Field
Honorable Caryn Tyson, Chair Senate Committee on Assessment and Taxation

Good Morning, my name is C. Edward Young. I am a former director of aviation for the Kansas Department of Transportation and an adjunct instructor in aviation planning at Kansas State University and one of the very few airport law practitioners in the United States. I also served as an economic development practitioner as a city and county administrator in communities in Kansas and Missouri.

Senate Bill 138 is an amendment to the Strother Field Exemption, a unique piece of legislation crafted in 1991 to deal with a problem that is unique to Strother Field. Strother Field opened in January of 1943 to fanfare. The cities of Arkansas City and Winfield constructed an airport functionally to serve the World War 2 needs of the US Government. The US government encouraged the cities to buy property for the potential of expanding the field and a potentially long war. Fortunately, the war only lasted another 2 years, but the impact of Strother Field continues strong 70 years later.

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. This economic efficiency avoids placing a tax on the citizens of Ark City, Winfield or Cowley County.

Airports receiving Federal funds are subject to grant assurances and ordinarily the property cannot 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).¹ 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.”² Any ad valorem tax placed on the tenants 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...”³ 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. To defend Strother Field from encroachment, both for aviation reasons and visual reasons, the Commission chose to acquire industrial properties in the vicinity of the airport. Acquiring those properties results in linguistic gymnastics. For instance, does acquiring a property and, therefore, extinguishing the owner’s rights to construct an antenna constitute an aviation related purpose? Does acquiring a property to limit the use of the property constitute an essential operation of an airport?

In 1991 and 1992, the Kansas legislature amended 79-201 sections q, r and s. These three sections deal with ad valorem tax exemptions related to airport projects. Obviously, r is the Strother Field Exemption. The language of the three sections is not identical. In fact, the other two exemptions draw distinct attention to “purposes essential to the operation of an airport” or for “aviation related purposes.” The Strother Field exemption language does not

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

² FAA Grant Assurance 24 (April 2022).

³ FAA Grant Assurance 5.

require airport purposes. It appears that the drafter of the Strother Field Exemption recognized the unique nature of this airport. It appears that the intent of the Strother Field Exemption was different than that of the other exemptions. In recent decisions of the Court of Tax Appeals and a 2011 decision of the Kansas Court of Appeals, the provisions of section q were applied to Strother Field, as opposed to the Strother Field exemption. Based on the recent decisions, the Strother Field exemption appears to have lost its purpose. As noted in the fiscal note, the overall impact of clarifying the Strother Field Exemption, the goal of SB 138, is very small in comparison to the nearly \$1.8 billion impact of the airport. Due to the language of the Strother Field Exemption and lack of on-going exemption, the Strother Field entities have spent amounts similar to the total fiscal impact attempting to clarify the exemption over the years.

Because Strother Field took steps to secure the continuity of the Airport by purchasing adjacent property, any new property acquired by the airport must fall into one of the other airport exemption in Sections q or s. If the original drafters intended Strother Field to fall into one of the other exemptions, they would be no section r.

Strother Field requests that you consider the taxation of airports that compete with it. 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.⁴ 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.⁵ 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...."⁶

S.B 138 makes two small changes to the Strother Field Exemption. It clarifies that the cities of Ark City and Winfield are the intended recipients of the exemption, and it exempts property that the Strother Field Airport Commission owns from taxation.

We appreciate your attention, and I can answer any questions.

⁴ ROCKWELL INT'L CORP. v. CLAY, 1989 OK 108 (1989).

⁵ 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.

⁶ R.R.S. Neb. § 3-511 (2022).