

BRAD SMOOT
ATTORNEY AT LAW

800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)
bradsmoot@smootlawoffice.com

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
MONTGOMERY COUNTY
SENATE ASSESSMENT & TAXATION COMMITTEE
Regarding 2012 SB 317
February 15, 2012

Mr. Chairman and Members:

Thank you for this opportunity to visit with the Committee on SB 317. Montgomery County officials and other local governments around the state have huge interest in what commercial assets are determined to be "machinery and equipment" and thereby exempt from ad valorem property taxes and what assets are determined to be "fixtures" which must be taxed as real property. This is the controversy raised by SB 317, as well as the recent Court of Tax Appeals decision involving the Coffeyville Resources Nitrogen Fertilizer plant. As you will hear from other conferees today, this is an issue complicated by constitutional law, case law, statutes and distinct factual situations.

The fact that this subject matter is very complex is nothing new to many members of this committee. Several of you, in fact, were members of the Legislative Post Audit Committee that oversaw an exhaustive review of Kansas tax policy, including a specific report on property tax exemptions. That Performance Audit, delivered in March of 2010, reached several conclusions that are worthy of mention and provide an important "context" for today's discussion.

First, the "machinery and equipment" exemptions currently in state law have already "significantly eroded the local tax base." See Audit page 23. Counties were estimated to have lost \$400 million as a result of the 2006 commercial tax exemptions, part of which was to have been offset by "slider" payments of \$176 million from the state. Unfortunately, at the time of the Audit, those payments only amounted to \$51 million, far less than was promised.

Second, "due to the increase in property tax exemptions which reduces the tax base, tax revenues based on residential real estate have grown faster than any of the other major property categories." See Audit page 6. By 2008, residential taxes increased as a percentage of total property taxes from 38% in 1994 to 47% in 2008. See Audit page 7.

Third, as if your job of establishing statewide tax policy wasn't difficult enough, "Kansas lacks good information about the impact of property tax exemptions on the state." See Audit page 17. Unlike sales tax exemptions, information on exempt property exist ONLY for real estate taken off the tax rolls. "For most exempt personal property, such as machinery and equipment, no cost information is available" and as a result, the fiscal

Sn. Assmnt & Tax
2-15-12

Attachment # 1

notes you are provided to evaluate proposed statutory exemptions “often are nonexistent.” Audit page 19. Take a moment to glance at the Fiscal Note prepared by the Department of Revenue for SB 317, which states: “. . . the Department does not have data on how much of the current assessed valuation of commercial and industrial real property includes assessments on trade fixtures; therefore, a precise estimate of the amount of decreased property tax revenue and its effect on local and state revenues cannot be estimated.” In short, no one can tell you what SB 317 will cost your constituents.

Fourth, in response to a request from the House Taxation Committee Chairman, the Division of Property Valuation, after comparing three other refining plants across the state with the Coffeyville Resources facility, concluded that the House Bill 2501 which is the same as SB 317, “could require a reevaluation by each county on the classification of fixtures and assets of these manufacturing operations.” In other words, the legislation before you, not the COTA decision, is likely to set off county by county reappraisal of manufacturing property. Memorandum attached.

Finally, any action by the legislature now to make massive changes to the law in Kansas based upon the ruling by the COTA would be premature. The matter is still pending before the COTA on the taxpayer’s motion to reconsider. In addition, the matter can and almost assuredly will be appealed to the Kansas Court of Appeals as soon as COTA rules upon the pending motion. The Court of Appeals can address the legal issues raised under existing law and if, as the taxpayer claims, COTA was wrong, the court will address the claims and there will be no need for legislative intervention in this pending appeal.

From your own state agencies, the evidence is clear. SB 317 presents a complex and controversial issue, something far beyond the impression this committee was given initially. We are confident that the Legislature will not rush to judgment on this bill. Without having better information, the passage of SB 317 might be a big mistake for Kansas businesses, homeowners and local governments. Thank you again for your willingness to hear from us today and for taking a deliberate approach to proposed changes in state tax policy. I would be pleased to respond to questions at the appropriate time.