

**BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
APPLICATION OF UNIFIED
GOVERNMENT OF WYANDOTTE
COUNTY/KANSAS CITY FOR
EXEMPTION FROM AD VALOREM
TAXATION IN WYANDOTTE
COUNTY, KANSAS

Docket No. 2014-5800-TX

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. An evidentiary hearing was held in this matter on February 2, 2015. The Unified Government of Wyandotte County and Kansas City, Kansas appeared as both Applicant and Respondent. The Applicant was represented by Colin Gotham, Attorney. The Respondent, referred to herein as the "UG", was represented by Ryan Carpenter, Attorney. Applicant Exhibits # 1 through 7 were admitted into evidence.

The Board finds and concludes as follows:

Jurisdiction

The Board has jurisdiction of the subject matter and the parties as an application for exemption has been filed pursuant to K.S.A. 2013 Supp. 79-213.

Subject Property/Issues Presented

The subject matter of this tax exemption application is a multi-sport athletic facility containing 6,537 stadium seats known as Community First Ballpark. The property is described by the local taxing authority as follows: Real estate and improvements commonly known as 1800 Village West Parkway, Kansas City, Kansas, also known as Parcel ID #105-041-02-0-20-02-008.02-0. The stadium was constructed in 2003 and contains concession stands, kitchen facilities, bathrooms, a video scoreboard and lighting for night games.

The Applicant requests that the subject property be granted an exemption from ad valorem tax exemption pursuant to K.S.A. 2013 Supp. 79-201a *Second* as property used exclusively for government purposes. The UG did not recommend that the requested exemption be granted and this matter was set for an evidentiary hearing at the UG's request. See K.S.A. 2013 Supp. 79-213(g) ("In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted.")

Factual Findings

The subject property was previously owned by the T-Bones Baseball Club L.L.C. (herein "T-Bones"), an independent league baseball team. The property was purchased by the Applicant for \$5.5 million on February 21, 2014 and is now leased to the T-Bones. The lease allows the T-Bones to play approximately 50 games from May through September each year. The tenant pays a fixed annual rent (\$31,500 in the first year increasing in increments to \$75,595 in the 20th lease year) as well as a \$0.50 for each ticket sold in connection with T-Bones games. This per ticket amount, however, does not apply to tickets sold at discount games to Wyandotte residents or those sold to non-profit organizations. In addition, 25% of the T-Bones' net profits on any other events are paid to the UG. All operating expenses – other than capital expenditures and a percentage of sewer costs – are paid by the T-Bones. The UG, however, is responsible for all ad valorem property taxes should they be assessed.

The lease grants the UG significant control of events and operations at the property. The tenant must make the stadium available for games played by Wyandotte County, Kansas high schools and for any other public use upon two weeks' notice. The lease allows the UG to do all sorts of local and community events at the stadium – high school games, charity walks/5Ks, local picnics and recreational activities, church events, baseball clinics, etc.

The Applicant contentions are as follows:

"Under the lease, the tenant is not unlike a management company that coordinates the Unified Government's use of Community First Ballpark. They are required to provide the County with recreational entertainment and maintain the stadium. Although compensated for their services, the public's benefit is twofold. First, the residents of Wyandotte County are provided with a local sports team for their enjoyment, drawing crowds to the Village West area and its local businesses.

Second, local schools and community groups may use the property for various charitable and recreational purposes.”

Applicant's Trial Brief, p. 3.

Applicable Law and Board Decision

In Kansas, taxation is the rule and exemption is the exception. Tax exemption statutes are strictly construed, and all doubts are resolved against exemption and in favor of taxation. *See Board of County Comm'rs v. Kansas Ave. Properties*, 246 Kan. 161, 166, 786 P.2d 1141 (1990); *In re Lietz Const. Co.*, 273 Kan. 890, 904-905, 47 P.3d 1275 (2002). The rule of strict construction, however, does not warrant unreasonable construction. *In re Application of Mental Health Ass'n of the Heartland*, 289 Kan. 1209, 1211, 221 P.3d 580 (2009).

The burden of establishing exemption from ad valorem taxation is on the applicant. *In re Via Christi Regional Medical Center, Inc.*, 27 Kan. App. 2d 446, 447, 6 P.3d 896 (2000) (citing *T-Bone Feeders, Inc. v. Martin*, 236 Kan. 641, 693 P.2d 1187 (1985)). To avoid reversal on appeal, the Board's determinations must be supported by substantial evidence in light of the record as a whole, including all relevant evidence in the record and determinations of veracity by this Board which observed the demeanor of witnesses. K.S.A. 2013 Supp. 77-621(c) and (d). “Substantial evidence is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion.” *In re Tax Appeal of Broce Construction Co., Inc.*, 27 Kan.App.2d 967, 970, 9 P.3d 1281 (2000) (citing *In re Tax Appeal of Collingwood Grain, Inc.*, 257 Kan. 237, Syl. ¶ 2, 891 P.2d 422 (1995)).

The Kansas Constitution, Article 11, Section 1 (b) provides in pertinent part that “[a]ll property used exclusively for state ... purposes ... shall be exempt from property taxation.” K.S.A. 2013 Supp. 79-201a *Second* provides in pertinent part that:

“All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which is vacant or lying dormant, which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political

subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 *et seq.*, and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401 *et seq.*, and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 *et seq.*, and amendments thereto, or K.S.A. 74-1501 *et seq.*, and amendments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 *et seq.*, and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 *et seq.*, and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph....”

It is undisputed that the stadium is owned by the UG and the property, during the times it is not used by the T-Bones, is used by the UG for various community activities. The Board further finds all of these non-T-Bones activities of the stadium can be constructed as governmental purposes of the UG.

The Board finds that the T-Bones, a private for-profit entity, is in the business of operating a baseball team. The physical use of the leased premises during those occasions when the T-Bones are playing games at the stadium is as a private entity operating a commercial business. While a baseball team may generate business and tourism in an area as well as instill civic pride, the Board does not find that the T-Bones’ commercial business operation is a governmental or proprietary function.

The Board finds the instant facts are readily distinguishable from those in *Lario Enterprises, Inc. v. State Bd. of Tax Appeals*, 22 Kan. App. 2d 857, 925 P.2d 440, *rev. denied* (1996), a Kansas Court of Appeals decision cited by the Applicant in its papers. In *Lario*, the City of Topeka operated a racetrack recreational facility through a management agreement with Heartland Park Topeka (HPT). The Kansas Court of Appeals found the fact that the City of Topeka hired HPT to run the facility did not preclude a grant of tax exemption pursuant to K.S.A. 79-201a *Second. Id.* Pursuant to *Lario*, a recreational facility – in this matter a baseball stadium – can further many governmental functions. However, in *Lario*, HPT was employed by the City of Topeka to manage its racetrack. In the instant matter, the T-Bones is not involved as a managing entity employed by the UG, but instead as a tenant making substantial lease payments to the UG.

When the property at issue is leased, the uses by both the lessor and lessee are to be considered. See *Farmer's Co-op v. Kansas Bd. of Tax Appeals*, 236 Kan. 632, 638, 694 P.2d 462 (1985); *Kenneth Godfrey Aviation, Inc. v. Smith*, 12 Kan. App. 2d 434, 746 P.2d 1068 (1987) *rev. denied* (1990); *In re Application of Polaroid ID Systems, Inc.*, 31 Kan. App. 2d 448, 66 P.3d 247, *rev. denied* (2003); *In re K.S.U. Foundation*, 34 Kan. App. 2d 40, 114 P.3d 176 (2005). In *Lario*, the Kansas Court of Appeals held there was no simultaneous use of the racetrack finding that the racetrack was at all times being used by the City of Topeka for its governmental purposes. Herein, there are simultaneous uses of the stadium. During those times the T-Bones are playing its games, as well as during other T-Bones functions, the stadium is being used primarily for business purposes. At the same time, the stadium is being used to generate income for the UG. Moreover, during those times, the UG is using the stadium for high school baseball games, clinics, picnics, charity and community events, the property is being used for various governmental purposes. These multiple uses of the property run counter to the “used exclusively” requirement of K.S.A. 79-201a *Second*. “The phrase ‘used exclusively’ in the constitution and the statutes means the use made of the property sought to be exempted from taxation must be only, solely, and purely for the purposes stated, and without participation in any other use.” *T-Bone Feeders, Inc. v. Martin*, 236 Kan. 641, 646, 693 P.2d 1187 (1985) (citations omitted).

The lease of the subject property to a private entity is another salient distinction from the facts in *Lario*. K.S.A. 2013 Supp. 79-201a *Second*, however, does provide certain instances where the lease of a property does not preclude the grant of tax exemption. In regard to the facts at instant, K.S.A. 2013 Supp. 79-201a *Second* provides, in pertinent part, that:

“The lease by a municipality or political subdivision of the state of any real property... to any entity for the exclusive use by it
for an exempt purpose ... if no portion of the lease

payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph...."
(Emphasis added.)

The Board finds that that T-Bones' use of the subject property is for business purposes and, therefore, not "for an exempt purpose." As stated above, T-Bones' operation of the subject property for its for-profit commercial business is not an exempt use. Further, there is no evidence in the record to indicate the lease payments made by T-Bones to the UG does not include any "compensation for return on the investment in such leased property." The lease in effect calls for T-Bones to pay the UG a fixed annual rent (\$31,500 in the first year increasing in steps to \$75,595 in the 20th lease year), \$0.50 for each ticket sold in connection with T-Bones games not specifically excluded, and 25% of the tenant's net profits on any other events not specifically excluded. For the foregoing reasons, the Board concludes that the Applicant has not satisfied the statutory requirements of K.S.A. 2013 Supp. 79-201a *Second*.

If evidence exists indicating how the T-Bones' commercial for-profit use of the stadium is an exempt use and, further, how the T-Bones' lease payments to the UG are not a return on the UG's investment in the stadium, such evidence should be presented to the Board in a timely filed *Petition For Reconsideration* in accordance with the Board's filing requirements set forth below.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS that, for the reasons set forth above, the applicant's request for ad valorem tax exemption is hereby denied.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. See K.S.A. 74-2426(b), and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification

of this order. See K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 74-2433(f), and amendments thereto.

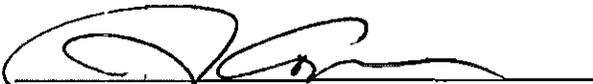
The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any petition shall also serve a complete copy of the petition on all other parties.

IT IS SO ORDERED



THE KANSAS BOARD OF TAX APPEALS


RONALD C. MASON, BOARD MEMBER


JAMES D. COOPER, BOARD MEMBER


ARLEN SIEGFREID, MEMBER PRO TEM


JOELENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

I, Joelene R. Allen, Secretary of the Kansas Board of Tax Appeals, do hereby certify that a true and correct copy of this order in Docket No. 2014-5800-TX, and any attachments thereto, was placed in the U.S. mail, on this 13th day of February, 2015, addressed to:

Doug G. Bach, County Administrator
Unified Government of Wyandotte County/KCK
701 N 7th St
Kansas City, KS 66101

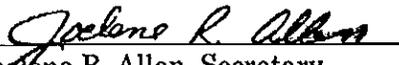
Colin Gotham, Attorney
Evans & Mullinix, P.A.
7225 Renner Rd, Ste 200
Shawnee, KS 66217

Eugene W Bryan, Wyandotte County Appraiser
Wyandotte County Annex
8200 State Ave
Kansas City, KS 66112

Ryan Carpenter, Asst Wyandotte County Counselor
Wyandotte Co Courthouse
710 N 7th St Ste 961
Kansas City, KS 66101

Debbie Pack, Wyandotte County Treasurer
Wyandotte Co Courthouse
710 N 7th St Ste 240
Kansas City, KS 66101

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary