

**IN THE SUPREME COURT OF MISSOURI**

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**Case No. SC94269**

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**AIRPORT TECH PARTNERS, LLP, and STENTOR COMPANY, LLP,**

**Appellants,**

**v.**

**STATE OF MISSOURI and CITY OF KANSAS CITY, MISSOURI**

**Respondents.**

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**Appeal from the Circuit Court of Cole County  
Honorable Jon Beetem, Circuit Judge  
Case No. 12AC-CC00223**

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**BRIEF OF APPELLANTS  
AIRPORT TECH PARTNERS, LLP, and STENTOR COMPANY, LLP**

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## JURISDICTIONAL STATEMENT

This is an appeal from the grant of summary judgment by the Circuit Court of Cole County in favor of Defendants. At issue is the interpretation and/or the constitutional validity of language in §137.115.1, RSMo. The challenged provision states, in pertinent part, “The true value in money of any possessory interest in real property in [commercial subclass property within a qualifying airport boundary] 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.” §137.115.1, RSMo. The issues in the case require interpreting the language to determine whether it creates an exemption from taxation for the costs of new construction or improvements for property of the type described in the statute, creates a distinct sub-class of commercial real property for property of the type described in the statute, and/or creates a different measure, gauge or rate of assessment or taxation for property of the type described in the statute than for other property in the same sub-classification of property. Further, the issues involve whether the quoted language from §137.115.1 is invalid because it violates

the Uniformity Clause, Mo. Const. Art. X, §3; the prohibition against creating subclasses of commercial real property, Mo. Const. Art. X, §4(b); or the prohibition against establishing exemptions beyond those specified in the Constitution, Mo. Const. Art. X, §6.

This Court has original jurisdiction over an appeal involving the validity of a statute of the state or construction of revenue laws of the state. Mo. Const. Art. V, §3. *McKay Buick, Inc. v. Love*, 569 S.W.2d 740, 741 (Mo. banc 1978); *Frontier Airlines, Inc. v. State Tax Commission*, 528 S.W.2d 943, 944 (Mo. banc 1978). While the circuit court ultimately rendered summary judgment on the basis that the plaintiffs lacked sufficient injury in fact to assert taxpayer standing, [L.F. 235; App. A1], jurisdiction is still proper in this court on the basis of the challenge to the constitutional validity of the statute. *Lebeau v. Commissioners of Franklin County*, 422 S.W.3d 284, 288 (Mo. banc 2014). Further, resolution of the question of sufficient injury in fact to assert taxpayer standing is linked to the construction of the quoted language from §137.115.1, RSMo.

## STATEMENT OF FACTS

This action has its basis in the application of a provision of Section 137.115.1 to the assessment of real property located in Platte County, Missouri. To give the facts context, the provision at issue states, with respect to the assessment of real property:

The true value in money of any possessory interest in real property in subclass (3), where such 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.

§137.115.1, RSMo.

The Kansas City International Airport (KCI) is located in Platte County, Missouri. [L.F. 45.] The airport is a FAR Part 139 certified airport operated by the

City of Kansas City. [L.F. 49, 51; App. A14, A16.] The City owned a parcel of unimproved land which adjoined the KCI facility and which was located within the ultimate airport boundary as shown by the federal airport layout plan for KCI. [L.F. 45.] This property is designated parcel 17-7.0-35-000-000-018.500 by the Platte County Assessor. [L.F. 171; App. A17.] In 2011, the City entered into a lease with TCC KCI Logistics I, LLC (TCC), under terms of which TCC constructed improvements on the land at its expense and on completion transferred ownership of those improvement to the City. [L.F. 75.] The City then leased back the premises (land and improvements) to TCC for a term of 60 years. [L.F. 75.] The improvements on the premises consisted of a 349,440 square foot warehouse building designated KCI LogisticsCentre I in the lease but shown as containing 348,553 square feet in the Platte County Assessor's records. [L.F. 188.] TCC subleased the premises to Blount International. [L.F. 171; App. A17.]

In order to understand the remaining facts and whether there is a genuine issue of material fact, it is necessary to consider the different summary judgment pleadings filed in this case, particularly with reference to the affidavits which were part of the summary judgment record. Following the filing of an amended petition by Airport Tech and Stentor (the Plaintiffs below), the State of Missouri filed a Motion for Summary Judgment on the Amended Petition. [L.F. 31.] There was no affidavit or other materials filed in support of the motion. [L.F. 31-43.] Instead,

the State relied on allegations in the amended petition and its answer. [L.F. 32-35.] One thing the State did rely on in support of its motion was Attachment A to the amended petition. [L.F. 34-35.] Airport Tech and Stentor filed a response to the State's motion for summary judgment and a separate cross-motion for summary judgment. [L.F. 44, 111.] Among the materials filed in support of their response and their separate motion was an affidavit of Steven M. Karbank and an affidavit of Eldon Kottwitz. [L.F. 49, 171, 173; App. A14, 17.] The Kottwitz affidavit will be detailed below. The State filed a reply memorandum in support of its earlier motion and a response to Airport Tech's and Stentor's motion. [L.F. 176.] Neither of the State's filings included an affidavit in support of its filings but it did rely on some of the statements in the Kottwitz affidavit. [L.F. 31-43, 176-185.]

Up to this point (September 19, 2013), the City had not filed either a response to the Airport Tech and Stentor motion nor a motion for summary judgment. The City subsequently filed its response in opposition to Airport Tech's and Stentor's motion for summary judgment with leave of court. [L.F. 198.] No affidavit was filed in support of its response and its factual opposition to the motion was predicated on its offered interpretations of how the Kottwitz affidavit should be read. [L.F. 200-201.] The City then requested and was granted leave to file a supplemental response to the Airport Tech and Stentor motion. [L.F. 224.] That filing included the affidavit of Brian T. Everly. [Supp. L.F. 7; App. A19.]

That affidavit is discussed below. Thus, at the time the trial court took up the motion for summary judgment, the summary judgment record consisted of: (i) a certified copy of the lease agreement between the City and TCC, (ii) three affidavits, two filed by Airport Tech and Stentor and one filed by the City, (iii) Attachment A to the Amended Petition (by virtue of the State's reliance on that document in its response); and (iv) some demonstrative summaries consisting of mathematical formulas showing how the assessment and tax levy statutes were applied. The State filed neither affidavits nor material outside the pleadings in its affirmative motion for summary judgment or its opposition to the Airport Tech/Stentor motion.

Eldon Kottwitz was employed as an appraiser in the Platte County Assessor's office. [L.F. 171; App. A17.] His affidavit identified tax parcel No. 17-7.0-35-000-000-018.500 as property owned by the City and located at Kansas City International Airport. [L.F. 171; App. A17.] The property was improved with a 348,553 square foot warehouse, which had an estimated market value of \$22 million for the land and improvements. [L.F. 171; App. A17.] It also stated that the property was leased by the City to TCC/KCI Logistics, who had subleased it to Blount International. [L.F. 171; App. A17.] In the opinion of the Assessor's office, applying the fourth sentence of Section 137.115.1 to TCC's interest in the subject property would have reduced the assessment to zero. [L.F. 171; App.

A17.] Accordingly, it was determined to not individually value TCC's interest in the subject property. [L.F. 172; App. A18.]

Brian T. Everly was employed as the Chief Commercial Appraiser in the Platte County Assessor's office. [Supp. L.F. 7; App. A19.] His affidavit identified tax parcel No. 17-7.0-35-000-000-018.500 as property owned by the City and located at Kansas City International Airport. [Supp. L.F. 7; App. A19.] The warehouse improvements to the subject property were improvements to the real property for purposes of real property tax assessment purposes. [Supp. L.F. 8; App. A20.] A Certificate of Qualification for Enterprise Zone Tax Abatement was attached to the affidavit that indicated that Blount, Inc., was qualified for a 50% tax abatement of ad valorem taxes from January 1, 2012, to December 31, 2021. [Supp. L.F. 8-11; App. A19; App. A20-22.] The records of the Assessor's Office did not reflect a calculation of the true value in money of the possessory interest of TCC or Blount International in the subject property and improvements was made or that the costs of construction of the warehouse facility were subtracted from the true value in money of the possessory interests of one or the other in the subject property. [Supp. L.F. 9; App. A20.] The records of the Assessor's Office also did not reflect the actual costs of construction of the warehouse facility on the parcel. [Supp. L.F. 9; App. A20.] Everly also made statements "based on information and belief," and not personal knowledge, to the effect that the land was unimproved in

2011 and the years preceding it; the City paid no real property taxes on the property in 2011 and the years preceding it; the parcel was leased in 2012 by the City to TCC/KCI, which constructed a 348,553 square feet warehouse with office space building on the land that was completed on or about April 26, 2012; the premises were sub-leased to Blount International for a part of 2012; and the costs of constructing the warehouse improvements were paid by TCC. [Supp. L.F. 8-9; App. A20-21.]

A side-by-side comparison of the two affidavits show they are in agreement on some points. There is agreement on the City's ownership of the subject parcel, its lease to TCC, TCC's improvement of the land with a 348,553 square feet warehouse building, and TCC's lease of the improved warehouse property to Blount International. There is also agreement that these improvements would be considered real property for property tax purposes. There are also elements in each of the affidavits of facts which are undisputed by the other affidavit. In the Kottwitz affidavit, the estimate of a \$22 million value on the land and improvements is not contradicted by anything in the Everly affidavit. In the Everly affidavit, the presence of a document in the Assessor's Office certifying the property as entitled to a 50% property tax abatement is not contradicted by anything in the Kottwitz affidavit (although the relevance and materiality of this

document was not specified by the City in its argument and there may be admissibility issues with it.)

The remaining statements from the two affidavits concern the application of the fourth sentence of Section 137.115.1, to TCC's possessory interest in the subject property by the Assessor's Office. The Kottwitz affidavit states that it was applied to that possessory interest, that doing so led to a conclusion that the assessed value would be \$0.00, and that, accordingly, the County did not separately value the interest. [L.F. 171-172; App. A17-A18.] The Everly affidavit stated the records of the Assessor's Office did not reflect that a true value in money for TCC's possessory interest was calculated, that the records did not reflect that the construction costs of the warehouse on the subject property was deducted from the true value in money of TCC's possessory interest, and that the records did not reflect the actual costs of constructing the improvements on the subject property. [Supp. L.F. 8-9; App. A20-21.]

Airport Tech Partners, LLP, and Stentor Company, LLP, both own commercial real property in Platte County, Missouri, and the City of Kansas City. [L.F. 49; App. A14.] Both pay property taxes on those properties to both political subdivisions. [L.F. 49; App. A14.] They challenge the validity of the quoted language from Section 137.115.1 on various constitutional grounds. [L.F. 9-20.] If they are correct and the provision is invalid, the effect of the application of the

provision to the TCC property and other properties that benefit from the provisions of the challenged language is that the total assessed value of property in the county is understated and, by simple operation of the tax laws, the tax levy rate applied to the two properties of Airport Tech and Stentor in Platte County increases, as does their ultimate tax burden. [L.F. 110.]

This is so because the tax bill on an individual property is based on the aggregate of tax rates (or levies) from different taxing districts authorized to levy taxes on the property multiplied by the assessed value of the individual parcel. The tax rate or levy is derived from an established and static revenue need of the taxing district divided by the total assessed value in the district. The tax levy reflects the amount that has to be charged against a specific amount of total assessed value in the district in order to produce the district's required revenue. The tax rate is inversely related to the amount of assessed value in the district. A higher total assessed value in the district produces a lower tax rate, while a lower total assessed value produces a higher tax rate. Because the effect of applying the challenged provision is to lower the total assessed value in the county, the tax rates applied to the assessed values of the properties of Airport Tech and Stentor are higher, as is the resulting tax bill.<sup>1</sup>

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<sup>1</sup> This is a non-mathematical, non-formulaic explanation of the formulas which were made part of the summary judgment record. [L.F. 110.]

**POINTS RELIED ON**

**I.**

**THE TRIAL COURT ERRED IN RULING THAT THE FACTS ESTABLISHED BY THE STATE SHOWED NO INJURY IN FACT BY AIRPORT TECH AND STENTOR AND GRANTING SUMMARY JUDGMENT ON THE ISSUE OF LACK OF STANDING IN FAVOR OF THE STATE AND CITY OF KANSAS CITY BECAUSE THERE WAS A GENUINE ISSUE AS TO A MATERIAL FACT ON THE DISPOSITIVE ISSUE FOR WHICH JUDGMENT WAS ENTERED IN THAT THE STATE'S AFFIDAVIT FROM ONE EMPLOYEE OF THE PLATTE COUNTY ASSESSOR'S OFFICE PURPORTING TO SHOW THAT THE FOURTH SENTENCE OF SECTION 137.115.1 WAS NOT APPLIED TO THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION WAS DIRECTLY CONTRADICTED BY THE AFFIDAVIT OF ANOTHER EMPLOYEE OF THAT SAME OFFICE THAT IT WAS APPLIED TO THE SUBJECT PROPERTY SUBMITTED BY AIRPORT TECH AND STENTOR.**

*Wallingsford v. City of Maplewood*, 287 S.W.3d 682, 685 (Mo. banc 2009)

*ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)

**POINTS RELIED ON**

**II.**

**THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE STATE AND CITY OF KANSAS CITY ON THE BASIS THAT AIRPORT TECH AND STENTOR LACKED STANDING TO MAINTAIN THIS ACTION BECAUSE AS TAXPAYERS THEY HAVE STANDING TO CHALLENGE SECTION 137.115.1 UNDER THIS COURT'S DECISIONS IN *LEBEAU V. COMMISSIONERS OF FRANKLIN COUNTY* AND *STATE EX REL. KANSAS CITY POWER & LIGHT CO. V. MCBETH* IN THAT A CHALLENGE TO THE LAWFUL DISCHARGE OF THE TAX LAWS OF THE STATE OF MISSOURI AND THE ENFORCEMENT OF CONSTITUTIONAL PROVISIONS CREATES STANDING IN TAXPAYERS.**

*LeBeau v. Commissioners of Franklin County*, 422 S.W.3d 284, 288 (Mo. banc 2014).

*State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525 (Mo. banc 2010)

## ARGUMENT

### Standard of Review

#### (Applies to All Points Argued on Appeal)

When the matter comes to the Court on grant of a summary judgment, the Court's review is essentially *de novo*. *Dierkes v. Blue Cross and Blue Shield of Missouri*, 991 S.W.2d 662, 666 (Mo. banc 1999). Whether summary judgment was properly granted is purely a question of law and because the trial court's judgment is based on the record submitted to it, there are no factual determinations by the trial court which need be given deference on appellate review. *Id.* In determining the propriety of the judgment entered, the Court reviews the factual record in a light most favorable to the party against whom judgment is entered. *Id.* As with consideration of the issue in the trial court, the Court "looks to the entire record to determine if there is any issue of material fact and whether the moving party was entitled to judgment as a matter of law." *Dial v. Lathrop R-II School District*, 871 S.W.2d 444, 446 (Mo. banc 1994). Statements in affidavits are taken as true unless contradicted by the non-moving party's response. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

In this appeal, the trial court granted the motion for summary judgment of the State and the City on the basis of lack of standing. Standing is a question of

law which is reviewed *de novo* by the appellate court. *LeBeau v. Commissioners of Franklin County*, 422 S.W.3d 284, 288 (Mo. banc 2014).

**I.**

**THE TRIAL COURT ERRED IN RULING THAT THE FACTS ESTABLISHED BY THE STATE SHOWED NO INJURY IN FACT BY AIRPORT TECH AND STENTOR AND GRANTING SUMMARY JUDGMENT ON THE ISSUE OF LACK OF STANDING IN FAVOR OF THE STATE AND CITY OF KANSAS CITY BECAUSE THERE WAS A GENUINE ISSUE AS TO A MATERIAL FACT ON THE DISPOSITIVE ISSUE FOR WHICH JUDGMENT WAS ENTERED IN THAT THE STATE’S AFFIDAVIT FROM ONE EMPLOYEE OF THE PLATTE COUNTY ASSESSOR’S OFFICE PURPORTING TO SHOW THAT THE FOURTH SENTENCE OF SECTION 137.115.1 WAS NOT APPLIED TO THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION WAS DIRECTLY CONTRADICTED BY THE AFFIDAVIT OF ANOTHER EMPLOYEE OF THAT SAME OFFICE THAT IT WAS APPLIED TO THE SUBJECT PROPERTY SUBMITTED BY AIRPORT TECH AND STENTOR.**

The trial court granted summary judgment for the State and City stating, as follows, the basis for its decision:

Petitioners claim standing on what is essentially this argument - “If someone’s taxes go down, mine will go up”. This argument does not

establish injury in fact and the undisputed material facts established by the State support this conclusion.

Failing to establish injury in fact is fatal to Petitioners as it deprives them of standing. The Court cannot entertain a claim for relief from [a] party lacking standing.

[L.F. 235; App A1.]

There are two essential elements to a summary judgment. First, there must be no genuine issue of a material fact and, second, the movant must be entitled to judgment as a matter of law on the basis of those undisputed facts. *Wallingsford v. City of Maplewood*, 287 S.W.3d 682, 685 (Mo. banc 2009); *ITT Commercial Finance Corp.*, 854 S.W.2d at 376-382. A genuine issue of material fact “exists where the record shows two plausible but contradictory accounts of the essential facts.” *Wallingsford*, 287 S.W.3d at 685. With respect to this prong of the summary judgment proceeding, the court is not concerned with the “truth” of the facts but with whether they are disputed. *ITT Commercial Finance Corp.*, 854 S.W.2d at 382. In determining whether there is a genuine issue of material fact, statements in affidavits are taken as true unless contradicted by the non-moving party’s response. *Id.* The non-movant is given the benefit of all reasonable inferences arising from the evidence presented. *Id.*

As noted above, the trial court based its decision “on the undisputed material facts established by the State.” [L.F. 235; App. A1.] Yet, the motion for summary judgment filed by the State contained no materials outside the pleadings and merely relied on its answer to the amended petition and Attachment A to the amended petition. [L.F. 31-43.] Attachment A to the amended petition consisted of the property record card for parcel number 17-7.0-35-000-000-018.500, the subject property. [L.F. 15; App A11.] The property record card showed the owner of the parcel as the City of Kansas City with a dba-property name of Blount International; classified the property as Commercial; and listed the following-- business type of Warehouse, square feet of 348,553, year build of 2011, and an appraised value as of November 28, 2011, of \$22,000,000. [L.F. 15; App. A11.] If the trial court is taken at its word that it was relying on the State’s filing as establishing the absence of a genuine issue of material fact and its entitlement to judgment on the undisputed facts, the trial court erred in ignoring the statements in the Kottwitz affidavit. However, the trial court could not ignore the Kottwitz affidavit in considering the motion for summary judgment. *ITT Commercial Finance Corp.*, 854 S.W.2d at 382; *Wallingsford*, 287 S.W.3d at 685. If it had given it the consideration due it, the trial court would have denied the motion for summary judgment.

Even if the trial court meant the material facts of the City, rather than the State, it erred in multiple respects in its reliance on the City's affidavit. The remaining statements from the opposing affidavits submitted by the parties concern the application of the challenged provision. The Kottwitz affidavit stated that the fourth sentence of Section 137.115.1 was applied to TCC's possessory interest in the subject property, that doing so led to a conclusion that the assessed value would be \$0.00, and that, accordingly, the County did not separately value the interest. [L.F. 171-172; App. A17-A18.] Giving Airport Tech and Stentor the benefit of the reasonable inferences arising from these facts, *ITT Commercial Finance Corp.*, 854 S.W.2d at 382, no tax parcel number was created for the TCC possessory interest in the records of the Assessor's office and no assessed value was computed because it was deemed unnecessary due to the effect of applying the fourth sentence of Section 137.115.1 to that taxable interest.

The City's affidavit not only fails to dispute the facts from the Kottwitz affidavit, it confirms them. The Everly affidavit stated that the records of the Assessor's Office did not reflect that a true value in money for TCC's possessory interest was calculated, [Supp. L.F. 9; App. A21,] confirming Kottwitz's affidavit that no record was created because of the \$0.00 value produced by application of the fourth sentence of Section 137.115.1. The Everly affidavit also stated the Assessor's records did not reflect that the construction costs of the warehouse on

the subject property were deducted from the true value in money of TCC's possessory interest, and that the records did not reflect the actual costs of constructing the improvements on the subject property, [Supp. L.F. 9; App. A21,] again confirming Kottwitz's statement that no record was created. The Everly affidavit only states the status of the paperwork in the Assessor's Office and that certain matters were not reflected in that paperwork. What the Everly affidavit does not state is that the fourth sentence of Section 137.115.1 was never applied by anyone in the Assessor's Office to the TCC property interest, nor does it address or contradict the affirmative statement explaining why no record was created for the TCC possessory interest.

For the trial court to reach the conclusion about the evidence that it did, it not only had to ignore the statements in the Kottwitz affidavit, it had to add words to the Everly affidavit that were not there or draw inferences from what was said there in favor of the City and against Airport Tech and Stentor. In this latter regard, the trial court could not draw such inferences. *ITT Commercial Finance Corp.*, 854 S.W.2d at 382. Further, the Kottwitz affidavit was not contradicted by the Everly affidavit either in its statements or inferences and could not be ignored by the trial court. To the extent that the Kottwitz affidavit is not disputed by the Everly affidavit, there were no undisputed material facts establishing the State's right to summary judgment because such facts established the standing of Airport

Tech and Stentor. *ITT Commercial Finance Corp.*, 854 S.W.2d at 382; *Wallingsford*, 287 S.W.3d at 685. Summary judgment was inappropriate. Even if it were permissible for the trial court to interpret the Everly affidavit in the manner in which it did, it still could not ignore the Kottwitz affidavit. If, in fact, the Everly affidavit says what the trial court construed it as saying, there are “two plausible but contradictory accounts of the essential facts,” i.e., a genuine issue of a material fact, when the Kottwitz affidavit is also considered. *Wallingsford*, 287 S.W.3d at 685. Summary judgment cannot be granted under those circumstances.

## II.

**THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE STATE AND CITY OF KANSAS CITY ON THE BASIS THAT AIRPORT TECH AND STENTOR LACKED STANDING TO MAINTAIN THIS ACTION BECAUSE AS TAXPAYERS THEY HAVE STANDING TO CHALLENGE SECTION 137.115.1 UNDER THIS COURT’S DECISIONS IN *LEBEAU V. COMMISSIONERS OF FRANKLIN COUNTY AND STATE EX REL. KANSAS CITY POWER & LIGHT CO. V. MCBETH* IN THAT A CHALLENGE TO THE LAWFUL DISCHARGE OF THE TAX LAWS OF THE STATE OF MISSOURI AND THE ENFORCEMENT OF CONSTITUTIONAL PROVISIONS CREATES STANDING IN TAXPAYERS.**

The State filed a motion for summary judgment on multiple arguments why judgment should be entered in their favor. [L.F. 31-43.] Among these, and the one on which the trial court sustained their motions, was the argument that Airport Tech and Stentor lacked standing to maintain their challenge to the validity of the fourth sentence of Section 137.115.1. In ruling for the State and City, the court below stated:

Petitioners claim standing on what is essentially this argument – “If someone’s taxes go down, mine will go up.” This argument does not

establish injury in fact and the undisputed material facts established by the State support this conclusion.

[L.F. 235; App. A1.] The trial court mischaracterizes the nature of Airport Tech’s and Stentor’s standing argument. A more faithful summary is, “If a statute requires the assessed values of otherwise taxable properties in a statutorily defined class of properties to be unlawfully omitted from, or undervalued in, the computation of the total assessed value used to derive the tax levy for a taxing district, the tax levy increases, as does the tax burden of taxpayers in the district, such as Airport Tech and Stentor.”

There is no dispute that TCC’s possessory interest in the subject property is subject to a property tax assessment. [L.F. 15, App. A11; L.F. 171; App. A17.] There is no dispute that the County Assessor did not assign a tax parcel number to TCC’s possessory interest in the subject property and as a result no assessment has been made of that interest with it effectively being assessed at \$0.00. [L.F. 171-172; App. A17-A18.] There is no dispute that the Assessor’s action in not assessing the subject property and effectively assessing it at \$0.00 was the result of application of the fourth sentence of Section 137.115.1. [L.F. 171-172; App. A17-A18.] There is no dispute that the Assessor’s conclusion was that application of the challenged provision would render a true value in money of the subject property of \$0.00 and that the failure to assign a tax parcel number to TCC’s

possessory interest was the product of administrative efficiencies. [L.F. 172; App. A18.] Based on the foregoing, there can also be no dispute that, in the absence of application of the fourth sentence of Section 137.115, TCC's possessory interest would have a positive assessed value that would have increased the total assessed value for the taxing districts levying a tax on the property. (At least presently, the amount of that assessed value is unknown since the Assessor determined that the costs of constructing the improvements would have exceeded the true value in money of TCC's possessory interest and decided there was no reason to attempt to separately value that interest. [L.F. 171-172; App. A17-A18.] The Assessor did determine that the appraised value of the improvements to the subject property was \$22 million, which would establish the potential high amount of the true value in money of TCC's possessory interest. [L.F. 15, App. A11; L.F. 171; App. A17.]) Under these circumstances, the application of the fourth sentence of Section 137.115.4 has produced some increase in the tax levy being applied to the properties of Airport Tech and Stentor.

Contrary to the trial court's decision, Airport Tech and Stentor have standing to maintain this action as taxpayers. "Taxpayers must have some mechanism of enforcing the law." *LeBeau*, 422 S.W.3d at 288. The gravamen of the standing doctrine is that a party has a stake in the outcome of the litigation. *Id.* In the context of a party maintaining an action as taxpayer, the stake in the outcome is a

public, not a personal, one. *Id.* Contrary to the trial court's stated rationale for its decision, in a taxpayer action, the plaintiff does not have to establish that a direct, personal loss has occurred. *Id.* Instead:

The taxpayer's interest in the litigation ultimately derives from the need to ensure that government officials conform to the law. . .

Taxpayer standing gives taxpayers the opportunity to challenge certain actions of government officials that the taxpayer alleges are unauthorized by law, and it permits challenges in areas where no one individual would be able to allege a violation of the law.

*Id.*, 288-289. Taxpayer standing serves as system of checks and balances by which taxpayers can hold their public officials accountable for their acts. *Id.*, 289.

Taxpayer standing can be based on a challenge of one of three types: (1) a challenged unlawful expenditure of public funds generated through taxation; (2) an increased levy in taxes resulting from a challenged unlawful activity; and (3) a pecuniary loss attributable to the challenged unlawful activity. *Id.*, 289, n.3. These three bases are not exclusive. Standing can be conferred by a specific grant (whether legislative or by the constitution). *Id.*, 288. It can also be established by compelling circumstances beyond those three instances mentioned above. *Id.*, 289, n.3.

Airport Tech's and Stentor's injury as taxpayers is understood within the context of the challenges to Section 137.115.1 that they make. Section 137.115.1 is constitutionally deficient in multiple respects. In essence, the fourth sentence of that provision either (i) exempts qualified airport property improvements constructed after January 1, 2008, from real property taxes to the extent of the costs of those improvements, (ii) creates a separate sub-class within the three sub-class of commercial real property established by Mo. Const. Art. X, §4(b), or (iii) results in an unequal, non-uniform treatment of Airport Tech, Stentor and all the other owners-taxpayers of commercial sub-class properties in the taxing district in comparison to TCC and others who would benefit from application of the fourth sentence of Section 137.115.1.

For property tax purposes, real property is assessed at its value or a percentage of its value as established by law according to the subclass of the real property. Mo. Const. art. X, §4(b). The three permissible subclassifications for real property are residential property, agricultural property and all other property, usually referred to as the commercial subclass. *Id.* In furtherance of this constitutional plan for taxing real property, the legislature enacted Section 137.115. In Section 137.115, the legislature opted to have real property assessed at a percentage of its actual value. §137.115.1 & .5, RSMo. Properties in the commercial subclass are assessed at 32 percent of their true value in money.

§137.115.5(3), RSMo. True value in money is the fair market value of the property on the valuation date . *Snider v. Casino Aztar*, 156 S.W.3d 341, 346 (Mo. banc 2005). It “is the price which the property would bring from a willing buyer when offered for sale by a willing seller.” *Missouri Baptist Children’s Home v. State Tax Commission*, 867 S.W.2d 510, 512 (Mo. banc 1993).

The fourth sentence of Section 137.115.1 provides that, for properties owned by a political subdivision within the ultimate airport boundary of a FAR 139 certified airport, the true value in money of any possessory interest in the property “shall be the otherwise true value in money of any such possessory interest, less the total amount of costs paid by a party, other than a political subdivision, towards any new construction or improvements on such real property completed after January 1, 2008, . . . regardless of the year in which such costs were incurred or whether such costs were considered in any prior year.” §137.115.1, RSMo. Thus, a special means for assessing a distinct type of real property is established by the provision. The clear and express language of the provision is that qualified airport properties, and only those airport properties, are valued at less than the applicable true value in money of the property in a manner that reflects a recoupment or offset for the costs of the improvements being assessed. In the language of *Missouri Baptist Children’s Home* , the value of such properties is the price which the

property would bring from a willing buyer when offered for sale by a willing seller *minus* the cost of the improvements.

On the merits, the State and City argued below that section 137.115.1 is simply an exercise of the grant of authority under Article X, Section 3 of the constitution, “Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law.” Mo. Const. art. X, §3. In other words, their contention is that this provision allows the legislature to mandate a method for valuing qualified airport properties coming within the fourth sentence of Section 137.115.1 from true value in money to something other than true value in money. They argue, “the statute merely sets forth a method of determining or assessing the true value in money of such leaseholds” and “changes the bonus value method of taxing leaseholds by subtracting the cost of new construction from the difference between the economic rental and the contract rental of the leasehold.” [L.F. 39.] Their contention is also, explicitly or implicitly, that the Legislature’s purported exercise of the authority under Article X, Section 3 to fix the methods for valuing property does not conflict with other provisions of the constitution limiting this authority and that, for property tax purposes, it may mandate that certain properties be valued for assessment purposes by some standard other than “true value in money.”

Recitation of the positions of the parties brings into focus the standing of Airport Tech and Stentor to maintain this action as taxpayers. They are not challenging the past or present assessment of TCC's possessory interest in the subject property. Instead, they challenge the overall legality of assessing properties subject to the fourth sentence of Section 137.115.1 by the manner designated in that provision and whether assessing officials following that statute are lawfully discharging their duties in accordance with the Missouri Constitution. What they seek is a declaratory judgment that the challenged provision is constitutionally infirm and invalid. That brings this case squarely within the holding of *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 530 (Mo. banc 2010). There, this Court noted the distinction between a third party challenging the specific assessment of another's property and seeking a declaration concerning the lawful discharge of the tax laws. A taxpayer lacked standing to bring the first type of action, the Court held, but had standing as taxpayer to maintain the second. *Id.* Specifically as it relates to the challenge of Airport Tech and Stentor, standing existing for a challenge to the statutory means or factors specified for application and consideration in future assessments of property that are subject to local tax levies. *Id.*

Airport Tech and Stentor have standing to ask the courts to take action to constrain the future unlawful and unconstitutional dictate of the Legislature in the

fourth sentence of Section 137.115.1. That sentence requires The trial court erred in ruling that they lack standing and in entering summary judgment against them.

## CONCLUSION

The trial court erred in granting summary judgment in favor of the State and City. They failed to establish that, under the undisputed material facts, they were entitled to judgment in their favor on the standing issue. In fact, the undisputed material facts established that Airport Tech and Stentor did have standing to maintain this action as taxpayers. Alternatively, under one interpretation of the City's affidavit, there would be a genuine issue of material fact on an essential fact in the case. Summary judgment was inappropriate in either circumstance. The judgment of the trial court should be reversed and the matter remanded to the court for full proceedings on the merits.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

The undersigned counsel further certifies that pursuant to Rule 84.06(c), this brief:

- (1) contains the information required by Rule 55.03;
- (2) complies with the limitations in Rule 84.06(b) and contains 6,428 words, determined using the word count program in Microsoft® Office Word 2010; and
- (3) the Microsoft® Office Word 2010 version e-mailed to the parties has been scanned for viruses and is virus-free.

/s/ Thomas W. Rynard

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above brief was served by electronic transmission, this 26<sup>th</sup> day of August, 2014, on the following parties of record:

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