

Approved: 2-7-96  
Date

## MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairperson Phill Kline at 9:07 a.m. on January 31, 1996 in Room 519-S of the Capitol.

All members were present except: Rep. Welshimer  
Rep. Pugh

Committee staff present: Chris Courtwright, Legislative Research Department  
Tom Severn, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Rep. Clyde Graeber  
Art Brown, Mid-America Lumbermens Assn  
Hal Hudson, National Federation of Independent Business  
Tim Kennedy, Kansas Taxpayers Network  
Bob Corkins, Kansas Chamber of Commerce & Industry  
Louis Klemp, Leavenworth County Commissioner  
Mark Beck, Director, Property Valuation Division  
David Kaaz, Kaaz Construction, Leavenworth  
Bill McGraw, McGraw Fertilizer Co., Leavenworth  
Larry Clark, Kansas County Appraisers  
Gerry Ray, Johnson County Commission

Others attending: See attached list

Chairperson Kline opened hearing on:

### **HB 2655 - Property tax exemption for business machinery and equipment, definition of terms**

Proponents:

Rep. Clyde Graeber (Attachment 1)  
Art Brown, Mid-America Lumbermens Assn. (Attachment 2)  
Hal Hudson, National Federation of Independent Business (Attachment 3)  
Tim Kennedy, Kansas Taxpayers Network (Attachment 4)  
Bob Corkins, Kansas Chamber of Commerce & Industry (Attachment 5)  
Louis Klemp, Leavenworth County Commissioner (Attachment 6)  
David Kaaz, Kaaz Construction, Leavenworth (Attachment 7)  
Bill McGraw, McGraw Fertilizer Co., Leavenworth

Written testimony only:

Jamie Clover Adams, Ks. Grain & Feed Assn (Attachment 8)

General:

Mark Beck, Director, Property Valuation Division (Attachment 9)

Opponents:

Larry Clark, Kansas County Appraisers (Attachment 10)  
Gerry Ray, Johnson County Commission (Attachment 11)

Discussion on defining the word "item" and in setting the effective date.

Chair closed hearing on **HB 2655**.

Moved by Rep. Empson, seconded by Rep. Larkin, minutes of the House Taxation Committee for January 23, 1996, January 24, 1996 and January 25, 1996 be approved. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, ROOM 519-S Statehouse, at 9:00 a.m. on January 31, 1996.

Chair asked for introduction of committee bills.

Moved by Rep. Pettey, seconded by Rep. Larkin, the committee re-introduce HB 2415 in regard to PTA and PTO sales tax exemption. Motion carried.

Moved by Rep. Donovan, seconded by Rep. Pottorff, committee introduce a bill exempting Wichita from sales tax on utilities used in production of water. Motion carried.

Moved by Rep. Donovan, seconded by Graeber, committee introduce a bill concerning definition of selling price regarding sales of motor vehicles. Motion carried.

Moved by Rep. Larkin, seconded by Rep. Goodwin, introduce a bill to provide sales tax exemption for girl scout cookies. Motion carried.

Moved by Rep. Larkin, seconded by Rep. McKinney, introduce a bill consistent with the interim committee recommendations regarding the Homestead Act circuit breaker on property tax. Motion carried.

Moved by Rep. Kline, seconded by Rep. Larkin, a committee bill titled Small Business Audit Relief Act be introduced to include the four areas discussed by the interim committee. Motion carried.

The next meeting is scheduled for February 1, 1996.

Adjournment 10:28 a.m.

Attachments - 11

# TAXATION COMMITTEE GUEST LIST

DATE:           JANUARY 31, 1996          

NAME	REPRESENTING
Hal Hudson	NFIB/KS
Bob [unclear]	KCCI
Art Brown	anti - Am Unemployed
Robert [unclear]	KGC
Pam [unclear]	KS AUTO DEALERS ASSN
TIM KENNEDY	KS TAXPAYERS NETWORK
Frances Kastner	KS Food Dealers Assn
Wanda [unclear]	KMHA
Louis Klump	Lv. Co.
LEE EISENHAUER	PMAC
Kevin [unclear]	BARRE & ASSOC.
Julius [unclear]	Wg City
Paul [unclear]	Wesley [unclear]
Sherry Ray	Johnson Co Commissioners
Paul [unclear]	KS County Appraisers
Tom Tunnell	Kansas Drain & Flood Assn.
Mike Taylor	City of Wichita
Bernie Koch	Wichita Area Chamber
Anne Spiess	KS Assoc of Counties



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## MID-AMERICA LUMBERMENS ASSOCIATION

### TESTIMONY FOR THE HOUSE TAXATION COMMITTEE

JANUARY 31, 1996

House Bill # 2655

Mr. Chairman, members of the House Taxation committee. It is my pleasure to address you today as a proponent of House Bill 2655. My name is Art Brown, and I represent the retail lumber and building material dealers in the State of Kansas.

As we understand the intent of this bill, any new item when purchased by a business would have any installation costs, freight or transportation charges and any transactional taxes taken from the total retail costs of said item.

We also understand that the language in lines 25 thru 29 of the bill conforms to decisions from the Board of Tax Appeals in some of their recent rulings. ( McGraw Fertilizer ( docket # 94-6931-PR) Geiger Ready Mix ( Docket # 94-6486-TG) Hund Service ( Docket # 94-8929-TG)). The prime focus of these cases was the definition of "retail costs when new." The Board listed 12 statements regarding this matter in their opinion. Their conclusion was that add-on costs incurred by the consumer after the retail price is paid, ( such as sales tax, installation and freight charges to the ultimate destination), are not included in the "retail cost when new." When separately listed so that they can be readily discerned from the actual retail price, these add-on costs should not be included in the tax valuation of commercial machinery and equipment.



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Both McGraw and Geiger decisions have been upheld on appeal to the Leavenworth Co. Dist. Court.

The language in lines 25 thru 29 of this bill would simply codify into statute what the Board of Tax Appeals has already stated and what has been upheld in District Court.

Given these facts along with the good news for our membership, as well as many other small businesses that another bite has been taken out of their personal property taxes, we are hopeful that this committee sees the wisdom in adopting this Legislation and ask the committee to pass HB 2655 favorably out of committee.

I thank you for giving me this opportunity to visit with you on this issue today and would be pleased to address any comments you may have or answer any of your questions.

RETAIL COST WHEN NEW

9. The Applicant contests the inclusion of the costs of installation, freight and sales tax in determining the "retail cost when new" for tax valuation of the personal property herein.
10. Commercial and industrial machinery is to be valued for tax purposes at the retail cost of the property when new less depreciation, to a floor of 20% of the retail cost when new of such property. Kan Const, Art 11, Sec 1(a)., K.S.A. 79-1439 (b)(2)(E).
11. The above referenced constitutional provision and statute does not define what it means by "retail cost when new". We have found no Kansas case law attempting to provide a definition. The Board notes, however, that there are other tax statutes that refer to what is included in the word "cost." K.S.A. 79-3602, 79-3602a and 79-3602b of the Kansas Retailers Sales Tax Act all define the term "selling price" as: "...the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer." Thus, for sales tax purposes, total cost includes freight and transportation charged from retailer to consumer. Leavenworth County produced a memorandum from the Division of Property Valuation (PVD) dated March 25, 1993, adopting the sales tax definition for use in setting the ad valorem tax value of commercial personal property. County Exhibit #3. No authority or reasoning is provided by either the memorandum or the county as to why the sales tax definition is being adopted for ad valorem tax purposes.
12. When a specific section of a tax statute does not provide a definition, there is some authority to look to other taxation sections within Chapter 79 of the Kansas Statutes Annotated for guidance. The Kansas Supreme Court examined this technique for ascertaining definitions within a legislative package such as Chapter 79. First Page, Inc. V. Cunningham, 252 Kan. 593,600 (1992). However, the Board notes that the high court (while not disapproving) did not specifically approve the use of this technique in interpreting Kansas statutes.
13. The Board is reluctant to use the First Page technique to apply definitions found in the Kansas Retailers Sales Tax Act to the statutes regarding ad valorem property tax. While both are found in chapter 79 of the Kansas statutes, these two kinds of taxes have distinctly different characteristics and purposes. The sales tax is a tax on the privilege of engaging in the business of selling tangible personal property at retail in this state, and is levied on the gross receipts of sales transactions. K.S.A. 70-3603. Ad valorem property taxes, on the other hand, are taxes on the ownership

of property and are levied on the value of property. Kan. Const. Art 11, Sec 1(a) and K.S.A. 79-1439 both state that commercial equipment shall be valued at its "retail cost when new". One is a tax on the transaction and the other a tax on the value of the item sold. It does not follow that what is included in one must also be included in the other. It is not clear to this Board that charges added to the retail price for freight, installation and particularly for sales tax are related to the value of the product sold. Therefore, the Board finds that the definition of "sales price" for retail sales tax purposes is not the same as, and is not an appropriate definition for, "retail cost when new" as applied to ad valorem taxation of commercial personal property.

14. Another troublesome feature of the proposition that freight, installation and sales tax be included in the "retail cost when new" for calculating ad valorem property taxes is that ad valorem taxes must be based on valuations that are uniform and equal. For example, suppose two companies, A and B, purchase the same piece of equipment with a retail cost of \$1,000. Taxpayer A has the equipment delivered by the same company they bought it from for a delivery fee of \$75. Added to the \$1,075 is a sales tax of 6.5% for a total of \$1,144.87. Company B, on the other hand, purchases the equipment from an out-of-state firm (thus paying no Kansas sales tax) and pays a third party to ship the equipment. On January 1 (and every year thereafter for the life of the equipment), Taxpayer A (cost = \$1,144.87) would have a higher valuation than B (cost = \$1,000) for the exact same item, purchased on the same day and for the same sale price.
15. There are no Kansas cases directly on point. A review of case law from other jurisdictions since 1980 shows very little litigation on the issue at hand. What few cases were found have decided that the term "cost", when used for valuation of personal property for ad valorem taxation purposes, included all costs actually paid by the consumer. This includes installation costs Crown Cork and Seal Co., Inc. v. South Carolina Tax Commission, 394 S.E. 2d 315 (S.C.1990); current data, transportation and set up costs, IBM Credit Corporation v. Board of County Commissioners of the County of Jefferson, 870 P.2d 535 (Colo.App 1993); the foregoing, as well as the price of the asset, site preparation and sales tax. Xerox Corp v. County of Orange, 136 Cal Rptr 583 (1977); and State Department of Assessments and Taxation v. Metrovision of Prince George's County, Inc., 607 A.2d 110, (Md.App. 1992). Critical to the reasoning in these cases was the law in these jurisdictions that the sales tax was a direct obligation of the retailer. As such, it was just another cost passed on to the consumer. Kansas statutes require a different result.

16. In Kansas, the sales tax is by statute not a cost to the retailer. K.S.A. 79-3604 provides that the sales tax shall be paid by the consumer; that sales tax shall be a debt from consumer to retailer; and that it is recoverable at law in the same manner as other debts. If the sales tax is not paid by the consumer, the director of taxation may proceed directly against the consumer to collect the full amount of the tax due. This statute has two important applications to the issue at hand. First, the Kansas sales tax is not a cost to the retailer which can be considered as simply another cost of doing business which is passed on to the consumer. Second, the Kansas sales tax is, by statute, a "debt" from the consumer to the retailer. K.S.A. 79-3604. In Kansas, "Money, notes and other evidence of debt are...exempt from all ad valorem and other property taxes levied under the laws of the state..." By defining sales taxes as a "debt" of the consumer, our statutes have specifically exempted sales taxes from ad valorem taxation.
  
17. This Board understands and agrees that all costs passed on to the consumer in setting the retail price are to be included in the valuation of personal property. These costs will appropriately include intangibles such as import and export taxes, excise taxes, freight, labor, commissions, advertising and other overhead expenses. However, the Board also sees a point at which amounts paid by a consumer are beyond the retail cost of the item being purchased. The cost new to a consumer of an item with a retail price of \$100.00, for example, can reasonably be construed to be \$100.00. Such a cost includes all the costs of production and marketing as well as a profit to producers and retailers. It is not at all clear that additional costs paid after the retail price has been paid by the consumer should also be included in the words "retail cost when new". All costs contributing to the retail price are part of the value of an item. Add-on costs incurred by the consumer after the retail price has been paid, however, have less to do with the value of the item and more to do with how and where the consumer is going to use the item. As long as these add-on costs are separately listed and readily discernible from the actual retail price of the item, there is no reason why these add-on costs cannot also be separated from the "retail cost when new" in determining ad valorem tax values.
  
18. The analysis in the previous paragraph is supported by Kansas tax statutes. The Board notes that the Kansas Retailers Sales Tax Act defined the term "selling price", in part, as "...the total cost to the consumer..." K.S.A. 79-3602, 79-3602a, 79-3602b. In explaining "total cost to the consumer", the above referenced statutes continue with these words: "...exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer." Id. The first thing the Board takes from this statutory language is that the legislature must have

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understood the words "total cost to the consumer" to not include freight and transportation costs; otherwise, there would have been no reason to specifically add these costs to the definition. The second thing the Board takes from the statutory language is that the legislature knows how to include the cost of freight and transportation in the words "total cost to the consumer". It did so in the Retailers Sales Act. No such language can be found in the property valuation statutes. K.S.A. 79-1439 provides that commercial machinery and equipment is to be valued at its "...retail cost when new..." In this statute, the legislature declined to include the cost of freight and transportation, as it had done in the sales tax act. The Board will not read into statutes words that are not there.

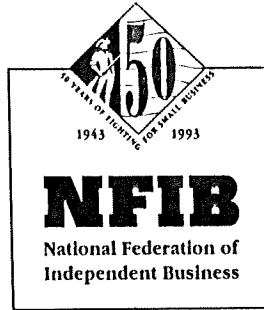
19. As the Board considers this matter, it does so with the knowledge that strict construction is required as tax statutes are considered penal in nature. In re Tax Protest of Strayer, 239 Kan. 136, 141, 716 P.2d 588, (1986). One of the effects of strict construction is that:

"Tax statutes will not be extended by implication beyond the clear import of language employed therein, and their operation will not be enlarged so as to include matters not specifically embraced. The rule of strict construction means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it." In re Tax Appeal of Atchison, Topeka & Santa Fe Railway Company, 17 Kan. App.2d 794, Syl 5, 844 P.2d 756 (1933).

Another effect of strict construction is that: "If there is a reasonable doubt about the meaning of a taxing act, it will be construed most favorably to the taxpayer." Executive Aircraft Consulting, Inc. v. City of Newton, 252 Kan. 421, Syl 4, 845 P.2d 57 (1992).

20. For all the reasons stated above, the Board finds that add-on costs incurred by the consumer after the retail price is paid, (such as sales tax, installation and freight charges to the ultimate destination), are not included in the "retail cost when new". When separately listed so that they can be readily discerned from the actual retail price, these add-on costs should not be included in the tax valuation of commercial machinery and equipment.

LEGISLATIVE



TESTIMONY

**Testimony of  
Hal Hudson, Kansas State Director  
National Federation of Independent Business**

**Before the Kansas House Taxation Committee**

**on House Bill 2655**

Wednesday, January 31, 1996

Mr. Chairman and members of the Committee: Thank you for this opportunity to appear here today. My name is Hal Hudson. I am State Director for the Kansas Chapter of National Federation of Independent Business. NFIB is the State's largest small-business advocacy group, with over 8,000 members who employ more than 100,000 Kansans. NFIB represents a broad cross section of Kansas employers who have one thing in common -- they all are small businesses. Over 80 percent of our Kansas members have 15 or less employees, and only one percent of our members employ over 100.

I am here today to urge you to support enactment of H.B. 2655, to bring a measure of reasonableness to the administration of business personal property tax, and because it is the right thing to do.

Last year we asked for the exclusion of sales tax, freight and installation charges from the definition of "original cost when new" with respect to the valuation of business personal property for property tax purposes. Some county appraisers opposed the exclusion, saying it would violate the standards practices of appraisers. This Committee deleted the exclusion language from H.B. 2108, which finally was enacted as S.B. 165, on the recommendation of a conference committee.

Well, this is not the only issue where we disagree with County Appraisers. Last year, you granted a tax exemption for any single item of business personal property for which the original cost when new was \$250.00 or less. We thank you for that. However, those of you who were on this Committee last year will remember one purpose in granting that exemption was to provide relief to the

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business owner from the tedious task of preparing long lists of property. Yet, some County Appraisers sent out letters this year requesting property owners continue to list all property. They have no authority under law to require it, but we are told it is O.K. to request it.

We are back, asking for the exclusion language in H.B. 2655 to be enacted, contrary to objections of appraisers. I said it is the "right thing to do." Sometimes I am asked, "who besides you thinks your position is right?" Today, I have an answer to that question.

The Kansas Board of Tax Appeals (BOTA) has ruled that, under existing Kansas law, sales tax, freight and installation charges should not be included in arriving at the "original cost when new," for property tax purposes. And, in a separate decision, a Kansas District Court has ruled that sales tax, freight and installation charges should not be included in arriving at the "original cost when new," for property tax purposes.

You will hear two arguments from opponents of H.B. 2655:

- 1) It will create a lot of work for County Appraisers, recalculating property values, and
- 2) It will cost jillions of dollars in lost revenue, resulting in a shift in property tax collections.

To these arguments, I say: "hogwash!" If the provisions of the act take effect for tax years commencing after December 31, 1995, that means it applies to property purchased in 1996 - which need not be reported until March 15, 1997. There should be no "going back" to recalculate values.

Second, any attempt to estimate a tax loss can reflect only a supposed loss of opportunity for tax collections in the future. Property purchases in the future will be made by new businesses starting up, growing businesses who are expanding, and by those who are replacing old or obsolete property with new. Each of these will bring new property on to the tax rolls which is not there now -- hence increasing taxable property and future tax revenues.

They deserve a break. It is the right thing to do. I say so. BOTA says so, and the Court says so. I urge you to report H.B. 2655 to the full House favorable for passage, and to support it on the House floor.

Thank you.

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Topeka, KS 66614-2015  
913-2719449

## *KANSAS TAXPAYERS NETWORK*

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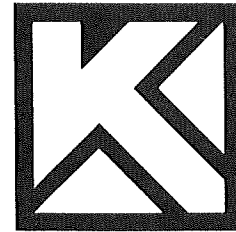
We appear today in support of House Bill No. 2655. We believe this amendment is necessary to clarify the meaning of "retail cost" and insure that all business personal property is valued uniformly in all taxing jurisdictions.

This amendment draws an important distinction between total cost and retail cost of a piece of business equipment. Generally speaking, business equipment dealers in Kansas City, Kansas and Hays would expect to pay the same amount for a copier that is ordered from a wholesaler in Wichita. However, the retail purchasers in the same two cities could experience dramatically different total costs for the same piece of equipment. Likewise, a purchaser from Hays who buys the copier from the Kansas City dealer and installs the equipment would realize yet another cost. The possible permutations are practically endless depending on location, transportation and installation costs, and taxes.

This amendment would create the same uniformity in values that the 79-5100 legislation affords in the area of automobiles. It would remove the probability of wide variations in taxable values and insure uniformity across the state in the area of business personal property. We urge you to consider this amendment favorably.

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2655

January 31, 1996

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Taxation

by

Bob Corkins  
Director of Taxation

Honorable Chair and Members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express our members' support for the personal property valuation proposal set forth in this bill.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

You may recall this idea was initially incorporated as part of HB 2108 last year and that KCCI provided early endorsement for that legislation. In fact, KCCI specifically urged the 1995 subcommittee reviewing that bill to retain its language excluding taxes. installation costs and freight

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personal property appraisals. We had no Board of Tax Appeals decision or district court opinion to reinforce our argument at that time, but we nevertheless contended it was a justified change of law. We still do.

Property taxes are based upon property value, so today's issue concerns which items of property cost are necessary to consider in determining property value. Sales tax is imposed on retailers for the privilege of selling goods...it just so happens that the tax is measured by the selling price of goods. Nothing about a sales tax adds value to the object of the sale.

Freight and installation costs, some argue, do add value because personal property is worthless until it is actually put to productive use. It cannot be productively used (so the argument goes) until it is transported and installed in its place of operation. However, while Kansas' Constitution establishes use valuation for agricultural land, it does so for no other class of property.

Furthermore, while the location of real estate is clearly a factor which always affects its value, personal property, by contrast, is mobile. It possesses a more certain level of value without regard to where it is located, how much the cost to take it there, or any expense in making it operational once it arrives.

Again, these points emphasize the distinction between costs and value. Generally accepted accounting principles (which do include tax, freight and installation in purchase prices) may set sensible and convenient standards for recording costs. They may even be appropriate practices for administering other types of taxes. But they do not reflect fair market value for property tax purposes.

For these reasons, KCCI urges your favorable action on HB 2655. Thank you for your time and consideration.

# COUNTY OF LEAVENWORTH

COURTHOUSE  
4th & WALNUT  
LEAVENWORTH, KANSAS 66048  
Area Code (913) 684-0400



FROM THE OFFICE OF:

## MEMORANDUM TO THE HOUSE OF REPRESENTATIVES - COMMITTEE ON TAXATION

### RE: HOUSE BILL 2655

Please consider this memorandum as constructive input into the task that you have in considering the passage of HB 2655 which proposes to change the current law to exclude sales tax, freight and installation from the term "retail cost when new" for the purposes of personal property ad valorem taxation. We feel the bill is poorly drafted and will result in an overabundance of litigation. Set out below are some of the flaws apparent in the bill as drafted:

**PROBLEM #1** One glaring problem is the retroactive clause contained in subsection (b). That clause purports to make the change retroactive to December 31, 1995. Although the legislature has to pick a date and in theory December 31, 1995 may sound as good as any other, in reality its application would be practically impossible. K.S.A. 79-306, 1995 Supp. provides that a taxpayer must list his property with the appraiser for taxation on or before March 15 of each year. The 1996 renditions have already been provided to each and every taxpayer in the county and many have been returned. By the time that this bill becomes law, all renditions will already have been returned to the appraiser, will have been completed by the taxpayer according to the current law, which provides that sales tax, freight and installation be included, and the tax assessment will have been calculated by the appraiser. To then apply HB 2655 would require the appraiser to re-issue every single rendition with requests that the cost be broken down and for the appraiser to recalculate the tax liability for each taxpayer in the county. This requires money and manpower, both of which require tax dollars. If the goal of the legislation is to ease the tax burden on the taxpayer, then the bill as drafted is fruitless. If the county is required to re-do the entire personal property taxing year for 1996, they will have to pay county employees for the overtime necessary to accomplish this task, not to mention, the printing and postage necessary to again contact each taxpayer. In order to fund this endeavor, mill levies would have to be raised, in essence thwarting the intent of the bill.

In addition to the problem of having to retroactively assess the 1996 tax, there exists a problem with appeal hearings. When taxpayers receive their value notices on May 1st, they have until May 15 to initiate an equalization appeal pursuant to K.S.A. 79-1449 to contest value. Once they have initiated the appeal, there is no other appeal allowed

City-County Probation  
684-0760

Council on Aging  
684-0777

Emergency Medic  
684-0781

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Community Corrections  
684-0775

County Infirmary  
684-1010

Health Depart  
684-0731

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pursuant to K.S.A. 79-2005. The proposed amendment is asking the appraiser to go back and change values after the time in which a taxpayer's appeal right has expired. I, as a taxpayer, can be given a tax assessment and have absolutely no right to appeal it? Where is the due process in this?

**SOLUTION #1** The solution to this problem would be to redraft the bill so the clause (b) reads "The provisions of this section shall apply to the tax year 1997 and forward and shall in no way be interpreted to apply retroactively.

**PROBLEM #2** A second problem that arises is the wording, "retail cost when new" means the total cost to the purchaser less the amount of any transactional taxes, installation costs and freight or transportation charges included in such cost." This could be read to mean any transactional taxes, any freight charges, or any installation charges included in the cost of an item. It WILL be argued by tax reps to mean freight from the supplier to the retailer, freight from the producer to the supplier, installation of Part A on Part B in the plant before the item is shipped to the retailer, etc. etc. etc. Why open the statute up to such litigation. It is obviously not the intent of the legislature to break an item's cost down into these type of components. It is the intent of the legislature, I would presume, to exempt "add-on" charges, those charges which are incurred after the retailer has tagged the item, the sales tax, the freight between the retailer and the ultimate consumer and the installation at the place where the item will be ultimately used.

**SOLUTION #2** The solution would be to clarify exactly what is meant, although the statute may become wordy, it would also become clear.

**PROBLEM #3** The third problem is not as easily remediable. HB No. 2655 is creating an exemption. It is exempting from taxation a portion of the costs of items belonging to businessmen and to not for profit corporations. It is acceptable for the law to exempt a category of property. In other words, it is okay to classify things. It is not okay for the law to exempt a category of people. In other words you cannot classify people. No-one would argue that you can exempt all boats. But, what if you attempted to exempt only those boats belonging to persons of hispanic origin? Red flag!? Can't be done. Let's say that I am a corporation called Fish Are Us. I use a boat in order to catch the fish that I then stuff and sell. Under HB 2655, the sales tax, freight and installation that I paid on the boat would be exempt because it is machinery and equipment actually and regularly used for business purposes. Let's say, that my brother has the identical boat, but he is independently wealthy so he doesn't run a business. He just fishes for fun, stuffs the fish and hangs them in his living room. The sales tax, freight and installation that he paid on his boat would not be exempt because he is not a businessman. You have not classified the property: boats used to catch fish; you have classified the people: businessmen and fishermen. Haven't you created an illegal classification?

**SOLUTION #3** The solution is to leave the personal property taxes as they now stand, where freight, installation and sales tax are included in the calculation of value on all items of personal property or to exempt freight, installation and sales tax from all items



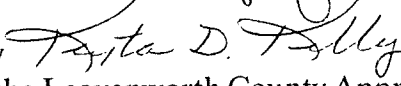
of personal property across the board. It would require dropping the bill or completely redrafting it.

**PROBLEM #4** A final problem with HB 2655 is that it continues to increase the divergence between the Kansas Tax Code and the Federal Tax Code, creating extra workload on the average businessman. The Federal Tax Rules require the inclusion of freight, transportation, sales tax and installation into "cost". H.B. 2655 would require Kansas Business people to maintain duplicate books on business personal property for taxation purposes. Another example of the discrepancy in the Federal and State Tax Codes is that Kansas limits Depreciation down to 20% of retail cost when new, whereas Federal rules allow depreciation down to 0%. All the average businessman will be doing is exchanging the amount of taxes he pays for the amount he pays his bookkeeper to keep an additional set of books solely for the purpose of personal property ad valorem taxation.

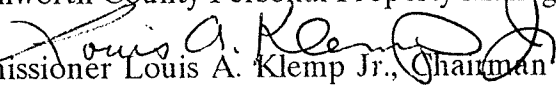
**SOLUTION #4** The solution to this problem is to eliminate the piecemeal changes to the Kansas personal property taxation code, to throw out the whole system and to start anew. Why not base Kansas personal property solely, exclusively and simply on the Federal Depreciation Schedule of a taxpayer? If the item is depreciated out, it is no longer taxable as personal property. The amount of the cost for Federal income tax purposes would also be the amount of cost for Kansas ad valorem taxation purposes. Et cetera. This would simplify the burden on both the appraiser and on the taxpayer while decreasing the need for litigation.

Thank you for taking the time to consider our suggestions.

Donna Graf   
Leavenworth County Appraiser

Keyta D. Kelly   
Counselor for the Leavenworth County Appraiser

Charles Beltz   
Leavenworth County Personal Property Manager

  
Commissioner Louis A. Klemp Jr., Chairman  
Leavenworth County Board of Commissioners

December 31, 1996

House of Representatives Committee

Re: HB 2655

My name is David Kaaz. My wife, two sons and I own Julius Kaaz Construction Co. Inc. and Leavenworth Excavating & Equipment Co. Inc. of Leavenworth. Both are family owned Kansas businesses: Kaaz Construction since 1932 and Leavenworth Excavating since 1959.

I wish to speak in favor of HB 2655.

KSA 79-102 states "The term 'personal property' shall include every tangible thing which is the subject of ownership, etc.". The Webster's Third New International Dictionary defines "tangible" as "capable of being touched: able to be perceived as materially existent esp. by the sense of touch".

I cannot touch sales tax.

I cannot touch installation.

Therefore, I would argue that the Webster Dictionary would not define sales tax or installation as tangible personal property.

The Board of Tax Appeals has on several occasions ruled that installation and sales tax are not subject to personal property tax.

The District Court of Leavenworth has ruled that installation and sales tax are not subject to personal property tax.

However, the Department of Revenue, through PVD, refuses to accept this definition.

Other examples:

I believe personal property tax on vehicles is based on the average resale value of the vehicle, based on NADA or other sales results. These figures do not include sales tax. Assessment of taxes must be equal. Based on the present interpretation by PVD, if I purchase a piece of machinery in Florida, delivered to Leavenworth by the dealer and \$4,000.00 in freight is included by the dealer, the freight is subject to personal property tax. If another contractor purchases the machine in Florida and hauls the machine to Kansas himself, he pays personal property tax on \$4,000.00 less. This is not equitable.

Passage of HB 2655 should not be necessary. However, this seems the only way the Department of Revenue definition can be made to agree with Mr. Webster, BOCA, and the District Court of Leavenworth ruling.

Thank you for your time. Are there any questions?

House Taxation  
1-31-96  
Attachment 7-1

- 79-28. JUDICIAL FORECLOSURE AND SALE OF REAL ESTATE BY COUNTY. 79-2801 to 79-2810.
- 79-29. MISCELLANEOUS PROVISIONS. 79-2901 to 79-2971.
- 79-30. EXCISE AND SALES TAXES. 79-3001 to 79-3097.
- 79-31. MORTGAGE REGISTRATION AND INTANGIBLES. 79-3101 to 79-3125.
- 79-32. INCOME TAX. 79-3201 to 79-32,191.
- 79-33. CIGARETTES AND TOBACCO PRODUCTS. 79-3301 to 79-3390.
- 79-34. MOTOR VEHICLE FUEL TAXES. 79-3401 to 79-34,164.
- 79-35. OLEOMARGARINE. 79-3501 to 79-3504 (Not in active use).
- 79-36. KANSAS RETAILERS' SALES TAX. 79-3601 to 79-3646.
- 79-37. KANSAS COMPENSATION.
- 79-38. CEREAL MALT BEVERAGE.
- 79-39. Grain. 79-3901 to 79-3999.
- 79-40. MUNICIPAL TAX LEVIES.
- 79-41. LIQUOR ENFORCEMENT.
- 79-41a. LIQUOR DRINK TAX.
- 79-42. MINERAL SEVERANCE.
- 79-43. INTERSTATE TAX COMPENSATION.
- 79-44. Financing Taxing Surplus.
- 79-45. HOMESTEAD PROPERTY.
- 79-45a. Reimbursement of Tax. 45a01 to 79-45a03c.
- 79-46. PRIVATE FOUNDATION.
- 79-47. BINGO. 79-4701 to 79-4799.
- 79-48. STATE GAMING REVENUE.
- 79-49. RESERVED.
- 79-50. AGGREGATE TAX LEVIES.
- 79-51. MOTOR VEHICLES.
- 79-52. MARIJUANA AND CANNABIS.

Article 1.—PROPERTY TAX TO TAXATION (a)

Cross References to Related Sections:  
 Uniform and equal rate of assessment  
 Kan. Const., art. 11, § 1.  
 Land devoted to agricultural use, see: 201  
 11, § 12.  
 Law Review and Bar Journal References:  
 "The Kansas Property Tax: Understant  
 Reappraisal," P. John Brady, Brian T.  
 L. Musil, 57 J.K.B.A., No. 3, 23, 24, 1961.  
 "Justifying Real Property Tax Exempt  
 James P. Buchele, 27 W.L.J. 252, 253

**79-101.** Property taxable, and this state, real and personal, no exempt therefrom, shall be subject in the manner prescribed by this:  
 History: L. 1876, ch. 34, § R.S. 1923, 79-101.

Source or prior law:  
 L. 1866, ch. 118, § 1; G.S. 1868, ch. 118, § 1.

Research and Practice Aids:  
 Taxation — 57.

- 7. Mentioned in holding religious organization's office building not exempt from taxation. Defenders of the Christian Faith, Inc., v. Horn, 174 K. 40, 44, 254 P.2d 830.
- 8. Mentioned; duty of stockholder to list capital stock, when. Runbeck v. Peterson, 177 K. 314, 318, 279 P.2d 233.
- 9. Mentioned; taxation of nonresident's automobiles used and stored in Kansas by resident employees upheld. V.S. Dicarlo Masonry Co. v. Higgins, 178 K. 222, 227, 284 P.2d 640.
- 10. Property of religious organization not exempt, when. Sunday School Board of the Southern Baptist Convention v. McCue, 179 K. 1, 7, 293 P.2d 234.
- 11. Evidence insufficient to show property used directly, immediately, solely and exclusively for educational purposes.

eral springs and wells, rights and privileges appertaining thereto.  
 The term "personal property" shall include every tangible thing which is the subject of ownership, not forming part or parcel of real property; also the capital stock, undivided profits and all other assets of every company, incorporated or unincorporated, and every share or interest in such stock, profit, or assets, by whatever name the same may be designated, provided the same is not included in other personal property subject to taxation or listed

**stang** *Eng*: STING 2: to furnish with a tang 3: to affect with or as if with a tang (evergreen forests ~ed with salt air —Amer. Guide Series: Oregon) (breeze blows ... ~ed with flowers —Amy Lowell)  
**tang** \ 'n -s [of Scand origin; akin to Dan & Norw tang seaweed, ON thang kelp, tangleweed]: any of various large coarse seaweeds; esp: a rockweed of the genus *Fucus* —compare BLADDER WRACK 1; see PRICKLY TANG  
**†tang** \ 'v b -ED/-ING/-S [imit.] vt 1: to cause to ring or sound loudly. (~ing the spoon on the shovel —Flora Thompson) 2: to utter with a tang (let thy tongue ~ arguments of state —Shak.) ~ vi: to make a harsh ringing sound  
**†tang** \ 'n -s [imit.]: a sharp twanging sound (as of a single stroke on metal or of the plucking of a string): TWANG  
**†tang** \ 'tʌŋ *adj.* usu cap [Tang, T'ang, Chin. dynasty (A.D. 618-907), fr. Chin (Pek) t'ang<sup>2</sup>]: of, relating to, or having the characteristics of the period of the Tang dynasty and esp. of the art forms developed during that period (Tang pottery)  
**tan-ga** also **tan-ka** or **tan-ka** or **tan-kah** \ tən'gā, -ŋ'kā \ n -s [Hindi taṅgā]: any of various Eastern coins: as a: a former silver coin of India corresponding to the rupee b: an old debased silver coin of Tibet c: a bronze coin of Portuguese India and corresponding unit of value equal to 1/16 rupia  
**tan-ga-le** \ tən'gälē \ n, pl tangale or tangaless usu cap 1: a people of the Bauchi district of northern Nigeria 2: the language of the Tangale people  
**tan-ga-lung** \ tən'gälŋ \ n -s [Malay tēnggalong]: a long-muzzled civet (*Viverra zibellina*) that is dark gray with longitudinal black stripes more or less broken into spots and is widely distributed in the East Indies  
**tan-gan-tang-an** \ tən'gən'tən'ən \ n -s [Tag]: CASTOR-OL PLANT  
**tan-gan-yi-ka** \ tən'gən'yēkə, tən'g-, tən'g-, -gə'nē- *adj.* usu cap [fr. Tanganyika, territory in eastern Africa]: of or from Tanganyika: of the kind or style prevalent in Tanganyika  
**†tan-gan-yi-kan** \ tən'gən'ən \ *adj.* usu cap [Tanganyika, eastern Africa + E -an] 1: of, relating to, or characteristic of Tanganyika 2: of, relating to, or characteristic of the people of Tanganyika  
**†tanganyikan** \ 'n -s cap [Tanganyika + E -an (n. suffix)]: a native or inhabitant of Tanganyika  
**tan-gar-i-dae** \ tən'garə,dē, tən'g- [NL, fr. Pg tangarā tanager + NL -idae — more at TANAGER] *syn* of THRAUPIDAE  
**tanga-ro-an** \ tən'gə'rōən, tən'g- \ n -s usu cap [Tangaroa, Polynesian deity + E -an]: one of an ethnic group or late wave of conquering Polynesians  
**tang chisel** n [†tang]: a chisel in which the shank tapers to a point and is driven into a handle  
**tanged** \ tən'd, -aɪnd \ *adj*: having or equipped with a tang (~ flint daggers)  
**tan-ge-lo** \ tən'jələ, lō \ n -s [blend of tangerine and pomelo] 1: a hybrid between a tangerine or mandarin orange and either a grapefruit or shaddock 2: the fruit of the tangelo  
**tan-gem-on** \ tən'jəmən \ n -s [blend of tangerine and lemon] 1: a hybrid between the tangerine and the lemon 2: the fruit of the tangemon  
**tan-gem-on** \ tən'jəmən \ *adj.* usu cap [Tangier, Tangiers, Morocco] 1: of or from the city of Tangier, Morocco: of the kind or style prevalent in Tangier: TANGIERINE  
**†tangier** \ 'n, often cap [fr. Tangier, Tangiers, seaport in Morocco]: OCHER ORANGE  
**†tangier** *comparative* of TANGY  
**†tangier pea** also **†tangier** peavine n. usu cap T: a wild pea

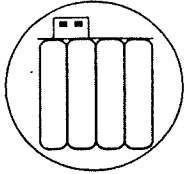
Africa — distinguished from **mandarin** (2): MANDARIN 4b(1) b: a tree producing tangerines: MANDARIN 4a 3 a: a variable color ranging from moderate reddish orange to vivid or strong orange b: of textiles: a strong reddish orange  
**†tangish** \ 'tʌŋ, -ʃ \ n [†tang + fish] *dial Brit*: HARBOR SEAL  
**†tangian** var of TANGUN  
**tan-ghin** \ tən'gɪn \ n -s [F, fr. Malagasy (voa) tanging] 1: a virulent poison derived from the kernels of the ordeal tree of Madagascar 2: ORDEAL TREE 1  
**tan-ghin-ia** \ tən'gɪnē, tən'g- \ n, cap [NL, fr. Malagasy tanging + NL -ia]: a genus of Madagascan trees (family Apocynaceae) having evergreen oblancoolate leaves clustered at the ends of the branches and terminal cymes of small white flowers — see ORDEAL TREE 1  
**tan-ghinin** \ tən'gɪnɪn, tən'g-; tən'gɪnɪn \ n -s [ISV tanghin- (fr. NL Tanghinia, genus name of the ordeal tree Tanghinia venenifera) + -in]: a poisonous bitter crystalline compound constituting the active principle of the ordeal tree  
**†tangi** \ tən'gɪ, tən'g- \ n -s [Maori, lit., to mourn, cry]: a Maori funeral rite; also: a lamentation or dirge that accompanies it  
**†tan-gā** \ 'tən'gā \ n -s [Per tangī narrowness, fr. tang narrow] India: a narrow gorge  
**†tan-gi-bil-i-ty** \ tən'gɪ'bɪləd-ē, tən-, -lətē, -i \ n -ES: the quality or state of being tangible  
**†tan-gi-ble** \ tən'gɪ'bəl, tən \ *adj* [LL tangibilis, fr. L tangere to touch + -ibilis -ible — more at TANGENT] 1 a: capable of being touched: able to be perceived as materially existent esp. by the sense of touch: PALPABLE, TACTILE (a ~ separable thing, like ... salt or bread —Sinclair Lewis) (wished he had a ~ reward for his efforts) b: substantially real: MATERIAL (the conquest of a territory meant a ~ advantage to the conqueror —Norman Angell) (a ~ gain in money —Wesley Connell) 2: capable of being realized by the mind: conceived or thought of as definable or measurable (I have never been in a community where happiness was so ~ —Arthur Langford) (the motives of action are quite ~ and the tales reflect actual situations —H.O.Taylor) 3: constituting or consisting of a corporeal item capable of being appraised at an actual or approximate value (~ assets) *syn* see PERCEPTIBLE  
**†tangible** \ 'n -s: something that is tangible: as a: a tangible asset b: a piece of tangible property  
**†tan-gi-ble-ness** n -ES: TANGIBILITY  
**tangible property** n: property (as real estate) having physical substance apparent to the senses; sometimes: intangible property (as stocks, bonds, notes) involved in a government's exercise of its police or taxing power  
**†tan-gi-bly** \ tən'gɪ'bəl, tən-, -bəl \ *adv*: in a tangible manner (virtue is ~ rewarded —J.D.Hart)  
**†tan-gier** \ 'tən'jɪ(ə)r, -aan-, -iə \ also **†tan-giers** \ -i(ə)r, -iəz \ *adj.* usu cap [fr. Tangier, Tangiers, Morocco]: of or from the city of Tangier, Morocco: of the kind or style prevalent in Tangier: TANGIERINE  
**†tangier** \ 'n, often cap [fr. Tangier, Tangiers, seaport in Morocco]: OCHER ORANGE  
**†tangier** *comparative* of TANGY  
**†tangier pea** also **†tangier** peavine n. usu cap T: a wild pea

**tangle net** n: G  
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**†tanglewrack** \ 'tæn-  
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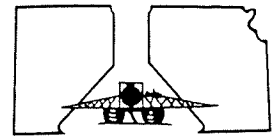
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**Kansas Grain & Feed Association  
Kansas Fertilizer & Chemical Association**



**STATEMENT OF THE  
KANSAS GRAIN AND FEED ASSOCIATION  
AND THE  
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION  
TO THE  
HOUSE TAXATION COMMITTEE  
REGARDING H.B. 2655  
REP. PHILL KLINE, CHAIR**



**KGFA & KFCFA advocate public policies that advance agribusiness to grow and prosper so they may continue providing Kansans and the world with the safest and fiber.**

House Taxation  
1-31-96  
Attachment 8-1

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**The Kansas Grain and Feed Association .....**

**..... a voluntary state organization founded in 1896 providing governmental representation, educational opportunities and a wide variety of other services to the vast and indispensable grain and feed marketing system. The 1200 members of the KGFA include country elevators, subterminal and terminal elevators, feed manufacturers, grain merchandisers and allied industries such as railroads, grain exchanges, equipment manufacturers and insurance firms.**

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**The Kansas Fertilizer and Chemical Association.....**

**..... a voluntary professional association for those involved in the plant nutrient and crop protection industry. KFCA represents our nearly 500 members interests in legislative matters at all levels of government, as well as providing educational opportunities and business services. The industry is committed to professional development and business viability for the plant nutrient and crop protection retail industry.**

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8-2

The following statement supporting H.B. 2655 is submitted on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). While the two associations share staff, they have distinct memberships, separate boards of directors and association programs. KGFA's 1200 members include country elevators -- both independent and cooperative -- subterminal and terminal elevators, feed manufacturers, grain merchandisers and others who serve the industry. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers, but also include manufacturer's representatives, distribution firms, and equipment manufacturers.

KGFA & KFCA support H.B. 2655 because it defines "retail cost when new" in the same way an ordinary person understands the term. The cost of an item does not include incidental and optional charges for services in connection with the purchase of the item. Further, it seems appropriate that the legislature define what they meant rather than leaving it to the courts to figure it out from somewhat sketchy legislative history.

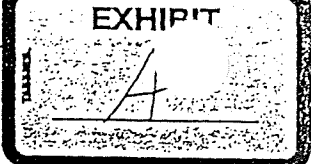
A KFCA member, McGraw Fertilizer is one of the taxpayers in the case recently decided by Leavenworth District Court on this issue. The arguments made in this case by both the Board of Tax Appeals (BOTA) and Judge David King are relevant here. Current law states "Commercial and industrial machinery is to be valued for tax purposes at the retail cost of the property when new less depreciation, to a floor of 20% of the retail cost when new of such property." However, "retail cost when new" is not defined in statute.

BOTA argued in McGraw Fertilizer that while all costs contributing to the retail price are part of the value of an item, add-on costs incurred by the consumer after the retail price has been paid has less to do with the value of the item and more to do with how and where the consumer is going to use the item. BOTA felt that as long as these add-on costs are separately listed and readily discernible from the actual retail price of the item, there is no reason why these add-on costs cannot also be separated from the "retail cost when new" in determining ad valorem tax values.

KFCA and KGFA agree with BOTA's reasoning on this issue. However, the arguments presented by District Judge David J. King in the appeal by Leavenworth County of the BOTA decision in McGraw Fertilizer follow common logic even closer and support H.B. 2655. (The transcript of the Leavenworth County Court Ruling is attached.) Judge King found and the arguments of the lawyers involved showed that "cost" is not defined in Kansas Statute and has various definitions in both Webster's Dictionary and Black's Law Dictionary. He rejected Leavenworth County's contention that the Internal Revenue Service's definition of cost basis is the equivalent of "retail cost when new" as not persuasive as a common and ordinary understanding of the term. Judge King felt and our Associations would concur that "cost" is the amount necessary to acquire the property itself. It does not include incidental and optional charges for services in connection with the purchase of the item, such as freight and installation charges. And it, likewise, does not include sales tax. That is not a cost of the item. It is something that must be paid to acquire the item, but not a cost which is inherent in the item.

KFCA and KGFA believe that Judge King's reasoning is proper because it outlines how an ordinary person -- our members -- would understand the cost of an item. In fact, during the court proceedings, Judge King asked the lawyer for the state how much a candy bar cost. The lawyer replied, 25 cents -- he obviously hasn't bought a candy bar in a while -- and skirted the issue when the Judge asked if that included sales tax. It clearly illustrated that ordinary people do not consider incidental charges to be part of the "cost" of the item.

KFCA and KGFA respectfully requests favorable consideration of H.B. 2655. It defines "retail cost when new" in a manner that is logical to ordinary citizens. If you have any questions, please contact Jamie Clover Adams at 913-234-0461.



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IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS, )  
 Plaintiff, )

vs. ) Case No. 9504 CV 238

McGRAW FERTILIZER SERVICE, INC., )  
 Defendant, )

and )

BOARD OF COUNTY COMMISSIONERS, )  
 Plaintiff, )

vs. ) Case No. 9507 CV 353

GEIGER READY-MIX, INC., )  
 Defendant. )

TRANSCRIPT OF COURT RULING

The above-captioned matter came on for hearing before the Honorable David J. King, District Judge, Division No. 2, Leavenworth County, Kansas, on the 14th day of December, 1995.

APPEARANCES:

For the Plaintiff: MS. KEYTA KELLY  
BOCC: Fourth & Walnut Streets  
Leavenworth, Kansas 66048.

For the Intervenor: MR. WILLIAM E. WATERS  
PVD: Kansas Department of Revenue  
Docking State Office Building  
4th Floor  
Topeka, Kansas 66612-1585

For the Defendant: MS. CAROL B. BONEBRAKE  
McGraw: 534 S. Kansas Avenue  
Topeka, Kansas 66603

For the Defendant: MS. LINDA TERRILL  
Geiger: 10100 Santa Fe Drive, Suite 309  
Overland Park, Kansas 66212

8-45

FORM 6511 - LAST 11 REPOSITIONERS PAPER & MFG. CO. 800-626-6113



1 THE COURT: Based upon the briefs that have  
2 been submitted and the review of the order in this case,  
3 the Court would make the following findings regarding these  
4 consolidated appeals.

5 First of all, at issue is a decision of the Board of  
6 Tax Appeals for the State of Kansas which is brought by the  
7 Board of County Commissioners of Leavenworth County,  
8 Kansas, challenging their interpretation of the  
9 phrase "retail cost when new," which appears in the Kansas  
10 constitution and statutes in relation to personal property  
11 tax valuation. At issue is a determination of whether the  
12 Board of Tax appeals made an erroneous interpretation of  
13 the law in interpreting that phrase.

14 To the extent that there is some argument that their  
15 act is arbitrary, capricious, and unreasonable, the Court  
16 finds no basis to believe the Board of Tax Appeals'  
17 decision is arbitrary, capricious, or unreasonable. The  
18 issue of whether they made a correct or incorrect  
19 interpretation of the law is much more difficult to grapple  
20 with.

21 The Court is not required to give any particular  
22 deference to the Board of Tax Appeals or PVD as to the  
23 relation of how that term is interpreted. The Court is  
24 entitled, if it finds either interpretation-- or any  
25 interpretation that they give to that claim to be

1 persuasive on the basis of the reasoning behind the  
2 decision, to give whatever credence I think it's entitled  
3 to. Just as the briefs of the parties and the amicus brief  
4 filed in this case, by the way of their argument, and by  
5 the argument behind them, I should give some consideration  
6 to them. I would not be required to rely on the decision  
7 of BOTA in this matter. It deals with an interpretation of  
8 the law not a finding of fact.

9 With that standard of review, there are a number of  
10 resorts the Court can make to try to interpret the term  
11 "retail cost when new." If there is some case law where  
12 the laws of Kansas have been interpreted, then this Court  
13 should utilize that and would be required by precedent to  
14 follow that. There is no case law that interprets the  
15 phrase "retail cost when new" from the appeal courts in the  
16 State of Kansas. There is, likewise, no district court in  
17 the State of Kansas that has interpreted that phrase that  
18 has been called to my attention or that I am aware of.

19 Resort to case law is not particularly helpful outside  
20 the State of Kansas unless I were to go-- And the Court  
21 would find that there is no other state that has been shown  
22 to this Court which has interpreted the phrase "retail cost  
23 when new" in connection with personal property tax  
24 valuation issues.

25 It is argued that other states have interpreted terms

1 which are similar to the phrase "retail cost when new" and  
2 that based on that similarity, this Court should apply the  
3 definition that the courts have applied to that similar  
4 term. I've given some consideration to that but do not  
5 find that is determinative of how the phrase "retail cost  
6 when new" should be interpreted.

7 The Court, absent that type of case authority, to  
8 settle the issue of what the phrase means, should resort to  
9 legislature history-- not history, but to legislative  
10 intent. What was the legislature's intent when it used the  
11 term "retail cost when new"? Is there something in the  
12 legislative history, the context, or applying the  
13 principles of legislative interpretation to this matter  
14 that would illuminate the issue of what the legislature  
15 clearly intended by the use of the phrase "retail cost when  
16 new"?

17 The legislative history in this matter is not  
18 particularly helpful. You cannot draw a particular  
19 conclusion from legislation that was proposed --  
20 legislation that was not passed -- to make a determination  
21 of whether the intent of the legislature was to include or  
22 exclude freight, installation, and sales tax in the term  
23 "retail cost when new" or not.

24 The legislature's change from a concept of "fair  
25 market value" valuation to "retail cost when new" is,

1 likewise, not particularly helpful in making some  
2 determination that this was an intent of the legislature to  
3 either include or exclude these additional items.

4 A resort to other definitions that are suggested by  
5 the parties regarding how the term "retail cost when new"  
6 should be interpreted is, likewise, not particularly  
7 helpful. To say that the Internal Revenue Service's  
8 definition of cost basis is the equivalent of "retail cost  
9 when new" is not persuasive as a common and ordinary  
10 understanding of the term. And deciding it on that basis,  
11 likewise, is not entirely helpful in that cost basis,  
12 according to Publication 551, would include freight  
13 installation, excise, and sales taxes. But there are, in  
14 fact, some other items noted that were not argued by the  
15 parties to be included in the term "retail cost when new."

16 The definition that the parties resort to from the  
17 Retail Sales Tax Act is, likewise, not particularly  
18 helpful, as BOTA noted in it's opinion in this matter.  
19 Reliance upon the sales tax acts to define retail cost is  
20 misplaced. And it is not because of the differences  
21 between the sales tax and the property tax-- ad valorem  
22 property taxes. The utilization of freight and  
23 installation within the definition of retail cost in the  
24 Sales Tax Act is not indicative of the legislature's intent  
25 that those matters be included within the phrase "retail

1 cost when new" for the valuation of personal property.

2 Resort to accounting principles and the definition of  
3 retail cost including incidental charges, likewise, is not  
4 persuasive or determinative of how this term should be  
5 defined. Even resorting to dictionary definitions, whether  
6 it's an ordinary layman's dictionary or a law dictionary,  
7 is not particularly helpful in that even the law  
8 dictionary, in some instances, would seem to indicate that  
9 incidental charges are included; and in others, that cost  
10 is the the functional equivalent of the price of the item.  
11 The ordinary definition-- dictionary definition is,  
12 likewise, not crystal clear in this regard.

13 Those are all the shortcomings that I have to assist  
14 me in making the determination of what the term "retail  
15 cost when new" means. I have considered the-- the opinion  
16 of BOTA. While it is not determinative, and I'm not  
17 required to give deference to it, at the same time, I think  
18 I'm entitled to be persuaded by a well-reasoned opinion.  
19 And in many regards, I find that BOTA's dealing with the  
20 arguments that have been presented by the parties before it  
21 regarding this term show a thorough and careful  
22 consideration of the issue, and I am persuaded by it's  
23 resolution of many of these competing arguments. The best  
24 that I can determine is that "retail cost when new"-- And  
25 I don't think there's much argument about the terms

1 "retail" and "when new." It's the term "cost" that's more  
2 difficult. What does the common and ordinary understanding  
3 of that term mean?

4 In my judgment, and this is my decision, that it's the  
5 amount necessary to acquire the property itself. It does  
6 not include incidental and optional charges for services in  
7 connection with the purchase of the item, such as freight  
8 and installation charges. And it, likewise, does not  
9 include sales tax. That is not a cost of the item; it is  
10 something that must be paid to acquire the item, but not a  
11 cost which is inherent in the item. It is not a common and  
12 understood item which would be included in what an ordinary  
13 person would understand an item to cost. If you consider,  
14 What does a television set cost?, you may say \$375. You  
15 would not consider that cost to include sales tax.

16 I do find, as well, that the opinion and the briefs  
17 which distinguish sales tax and note that it is considered  
18 in Kansas law as a debt and not a part of the value of  
19 property to be persuasive in that regard.

20 That's the decision of the Court then, that freight,  
21 installation, and sales tax are not included within the  
22 term "retail cost when new."

23 This will be effective upon the submission and filing  
24 of a journal entry. I'll ask counsel to decide who will  
25 submit that. I don't care who draws the journal entry.

11  
8-10

1 When you draw the journal entry, indicate the Court made  
2 findings on the record which are incorporated into the  
3 journal entry. Do not attempt to recite the findings in  
4 the journal entry. The findings that I have made will be  
5 the findings that are incorporated into the journal entry.  
6 Merely indicate in the journal entry that, after making  
7 these findings which are incorporated, that the Court  
8 determined that the appeal should be denied and that BOTA  
9 will be affirmed. Okay? Thank you.

10 MS. BONEBRAKE: Thank you, Your Honor.  
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Division of Property Valuation

MEMORANDUM

TO: Representative Phill Kline  
 Chairperson, House Assessment and Taxation Committee

FROM: Mark S. Beck, Director

DATE: January 31, 1996

SUBJECT: House Bill 2655

Thank you for the opportunity to provide testimony regarding House Bill 2655. Since this proposal to exclude sales tax, freight, and installation from the definition of 'retail cost when new' is purely a policy issue and solely within the realm of the Legislature, I will not stand to oppose the bill. I would, however, like to give you a little perspective on where PVD has been in regard to this issue.

**I. DIVISION OF PROPERTY VALUATION GUIDELINES AND DIRECTIVES REQUIRE SALES TAX, FREIGHT AND INSTALLATION COSTS TO BE INCLUDED IN THE "RETAIL COST WHEN NEW" OF COMMERCIAL AND INDUSTRIAL PERSONAL PROPERTY**

Currently, Division guidelines and directives require county appraisers to include sales tax, freight and installation costs to be included in the "retail cost when new" of commercial and industrial property. We believe this requirement is consistent with IRS regulations, the standards of the International Association of Assessing Officers ("IAAO"), and generally accepted accounting principles.

IRS Publication 551, pertaining to the basis of assets, defines "cost" to include (1) sales tax charged on the purchase; (2) freight charges and (3) installation charges. IAAO's Standard on Valuation of Personal Property (August, 1985) provides under the "cost approach to value," the appraiser must identify the "total acquisition cost including freight, installation, taxes, and fees. ¶7.2.1. Generally accepted accounting principles consistently provide that "cost" includes all costs necessary to place an asset into operation. While these authorities do not define the exact phrase "retail cost when new," they do define the term "cost" and they consistently hold that the term "cost" includes (1) sales taxes; (2) freight charges; and (3) installation costs.

**II. BOTA AND ONE DISTRICT COURT HAVE HELD THAT THE PHRASE "RETAIL COST WHEN NEW" DOES NOT INCLUDE SALES TAX, FREIGHT AND INSTALLATION; BOTA EARLIER HELD THE OPPOSITE VIEW**

Last year, BOTA held in a couple of cases out of Leavenworth County (Geiger Fertilizer Services, Inc. and Geiger Ready Mix Co., Inc.) and in a case out of Sedgwick County (Dillon Stores, et al.) that the phrase "retail cost when new" does not include sales tax, freight and installation. The Division was



not a party at BOTA, however, the Division was permitted to intervene in the Leavenworth County District Court on appeal. Recently, the Leavenworth County District Court affirmed the BOTA decision with very little discussion of the issue. The Division does plan to appeal the decision to the Kansas Court of Appeals.

BOTA decisions last year were contrary to earlier decisions from BOTA which had held that the phrase "retail cost when new" included sales tax, freight and installation.

### III. PVD REQUESTS THAT ITS PROVISIONS NOT BE MADE RETROACTIVE

We would request that it be made effective with the 1997 tax year. If this bill is made retroactive, county appraisers will have to review all personal property returns filed by businesses to back out sales tax, freight and installation costs. Most of the time the taxpayer will have to be contacted and requested to furnish the "retail cost when new" less sales tax, freight and installation. This is a monumental task that will be very difficult to completed before May 1, 1996, when personal property values are required to be completed and mailed to taxpayers.

While, as I stated earlier, I am not actively opposing the bill, I would ask that during your deliberations over this issue you take into account a couple of important points.

The first is the continued erosion of the tax base. In some counties the loss may be significant.

Another consideration is that the bill will require county appraisers and taxpayer to recalculate the \$250 exemption. Eliminating a portion of the "retail cost when new" will expand the \$250 exemption to include more commercial and industrial personal property.

Also, the concept of creating a different definition of "cost" for property tax purposes than used for IRS and accounting purposes is not "taxpayer friendly" because business taxpayers will have to maintain two sets of books---one for Kansas property tax purposes and another for IRS and accounting purposes.

**KANSAS COUNTY APPRAISERS ASSOCIATION**

P.O. Box 1714  
Topeka, Kansas 66601

To: House Committee on Assessment and Taxation  
From: Larry Clark, CAE  
Subject: House Bill 2655  
Date: January 31, 1996

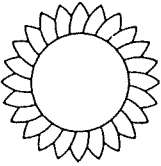
My name is Larry Clark and I am appearing on behalf of the Kansas County Appraisers Association in opposition to House Bill 2655.

Our concern with this legislation is that it will create the need for property owners to keep two sets of property records. Most businesses do not currently keep track of all the separate charges involved in the purchase of personal property. Instead, they capitalize and depreciate those charges as a part of the original purchase price.

If this bill becomes law every owner of commercial personal property will have to produce records showing the breakdown of all charges involved in every purchase. This will make the assessment of personal property much more difficult than it is now. This type of accounting is not required for other purposes. In fact, it flies in the face of accepted accounting practices. Therefore, owners of commercial personal property will be required to maintain a separate set of books for property tax purposes and reconstruct those books for prior purchases.

For these reasons, the appraisers association opposes the passage of this bill.

House Taxation  
1-31-96  
Attachment 10



Johnson County  
Kansas

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January 31, 1996

HOUSE TAXATION COMMITTEE

HOUSE BILL 2055

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR  
JOHNSON COUNTY BOARD OF COMMISSIONERS

Mr. Chairman, members of the Committee, I appear today to express the opposition of the Johnson County Commission to HB 2655.

During the 1995 Legislative Session a bill passed exempting commercial personal property with a new retail cost of \$250 or less, from property tax. HB 2055 defines retail cost when new as the total cost to the purchaser less the amount of any transactional tax plus installation costs and shipping costs. Typically, the following expenses are considered part of the cost of acquiring equipment: 6% for sales tax, 2% to 4% or more for shipping and 10% to 50% for installation.

Under this bill the commercial personal property owners will be required to maintain two sets of books. It is contrary to approved accounting practices and the International Association of Assessing Officers (IAAO) standards.

Paul Welcome, Johnson County Appraiser advises that the bill will result in a 20% reduction of assessed value for commercial personal property. In 1995 such property had an assessed value of \$301,102,194. 20% equates to a decrease of \$60,220,439 in assessed value. In Johnson County, with a 125 average mill levy, the effect of the decrease will result in a loss of \$7,527,555 in revenue.

HB 2055 will continue the trend of shifting the tax burden to real property. It began with the exemption of farm machinery and was followed by the exemption of inventories under the reappraisal and classification laws. Every year since, there have been attempts to move further in that direction.

The Johnson County Commission and the County Appraiser believe HB 2055 is not in the best interest of Johnson County citizens or the citizens of Kansas. Accordingly the Committee is urged to reject this proposal.

Thank you for the opportunity to present our concerns to you.

House Taxation  
1-31-96  
Attachment 11