**Memorandum**

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| **Identifying Information:** | **Appraisal of Commercial and Industrial Personal Property** |

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| **Tax Type:** | **Property Tax** |
| **Brief Description:** | **Inclusion of Sales Tax, Freight and Installation Charges as it Pertains to Personal Property** |
| **Keywords:** |  |
| **Effective Date:** | **07/30/1997** |

**Body:**

M E M O R A N D U M

TO: County Appraisers
County Clerks

FROM: Mark S. Beck
Director of Property Valuation

SUBJECT: Board of County Commissioners of Leavenworth County v. McGraw
Fertilizer Service, Inc. and Geiger Ready-Mix Co., Inc. (sales tax,
freight and installation issue)

DATE: July 30, 1997

As many of you know, the Kansas Supreme Court issued its order on the division's motion for reconsideration in the above referenced matter on July 11, 1997.

In march, the Court held that sales tax is never part of the retail cost when new of commercial and industrial personal property and that freight and installation charges may be included as part of the cost of the item, except where such costs are separately charged and are readily discernible from the item's price.

In April, the Division requested the Court reconsider its decision. The Court agreed to consider whether its decision should be applied retroactively or prospectively.

In the July 11 order, the Court held that the two litigants (McGraw and Geiger) are entitled to have sales tax, freight and installation charges removed from the retail cost when new of their commercial and industrial property for all of the years in which they protested their taxes regarding its inclusion. Also, the Court held that all taxpayers who have, as of March 7, 1997, an appeal or protest pending challenging the inclusion of sales tax, freight and installation charges are entitled to retroactive relief. To all other cases the decision is to be applied prospectively. Unfortunately, this last part of the decision is not clear. The court may mean that in all other cases, its March 7, 1997, decision applies prospectively; i.e., to tax years 1998 and forward. On the other hand, it may mean that the decision applies to the remainder of the 1997 tax year.

Many of you are holding appeals and protests on this issue. Your county should process all such appeals and protests that were filed on or before March 7, 1997, wherein the issue of including sales tax, freight and installation as part of retail cost when new was raised. Your county can remove any sales tax if it was included in the "retail cost when new" that was used as a basis of valuation. Also, you should remove freight and installation where such costs are separately charged and where such costs are readily discernible from the sales price of the item.

In addition, many of you have appeals and protests which were filed after March 7, 1997. As stated above, it is unclear whether appeals filed after March 7, 1997, are entitled to relief for the sales tax, freight and installation issue pursuant to the recent Kansas Supreme Court decision. Therefore, the division recommends that "no charge" orders be issued in these cases to allow the taxpayer to appeal to the Kansas Board of Tax Appeals (BOTA) for a resolution of the issue. If you choose instead to grant relief in these instances, your county may find itself in a position later of having to issue an added tax bill if BOTA decides that relief is not merited. On the r hand, a "no change" order may eventually require a county to refund taxes if BOTA decides that relief is warranted.

Several appeals have already been docketed at BOTA, some of which were originally filed after March 7, 1997. Obviously, BOTA will have to decide whether relief should be granted under these instances. It would be inappropriate and futile for the division to decide this particular matter. After BOTA decides the issue, we will inform counties of the decision so that you will know how to best handle the 1997 protests which can be expected after tax statements are mailed this fall.

**Date Composed: 10/06/1997 Date Modified: 10/09/2001**