**Opinion Letter**

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| **Letter Number:** | **O-1999-18** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **KDOR policy with regard to "hand tools".** |
| **Keywords:** |  |
| **Approval Date:** | **08/03/1999** |

**Body:**

Office of Policy & Research

August 3, 1999

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Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of May 26, 1999, has been referred to me for response. Thank you for your inquiry.

By your letter you request that the Kansas Department of Revenue revisit the issue of the meaning of the term “hand tools” as used in K.S.A. 79-3606(kk)(3)(A). You correctly note we interpret the term “hand tools” to include any hand held power operated or manually operated tool. You suggest this policy should be changed to include only those tools that are powered by hand.

Your believe this change would bring Kansas tax policy in line with certain other jurisdictions. You also suggest it would have a minimal fiscal impact on the state. In support of your position you offer several arguments, including references to court cases, dictionary definitions, and references to various laws of Kansas and other jurisdictions.

As you know, the Kansas Department of Revenue’s definition of “hand tools” as used in K.S.A. 79-3606(kk) is long standing. The term has included hand held power operated tools since the law became effective in 1989. Information Guide 19-88-1 contains the following definition: “ ‘Hand tools’: any hand held power operated or manually operated tool whether or not used directly in the manufacturing of tangible personal property.” Subsequent versions of the information guide have included the same definition.

The court cases cited in your letter which attempt to interpret the meaning of the term “hand tools” focus on the distinction between manually powered and machine powered tools. They are old cases. More recent cases provide definitions which are more relevant to today:

. . . Today a tool is still a powered or unpowered item designed to be used . . . . to perform a task and is manageable in size and weight so that in its normal operation it can be maneuvered or used by the operator’s physical strength alone without the aid of independent motive powers and it is liable to be more expensive and require more skill. The definition includes common hand tools and common powered hand tools such as drills, wrenches (and) saws . . . . *MacDonald v. Mercill*, 714 P.2d 132, 135 (Mont. 1986)

“Hand tools” today include power tools which are hand held.

In 1995, the Kansas Court of Appeals decided the case of *In the Matter of the Appeal of Alex R. Masson, Inc*. [21 Kan. App. 2d 863 (1995)] In that case the Court considered the issue of statutory construction. The Court noted:

In this jurisdiction,

‘ “[i]n order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof *in pari materia*. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislation, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law.”’ *Todd v. Kelly*, 251 Kan. 512, 516, 837 P.2d 381 (1992) (quoting *Kansas Commission on Civil Rights v. Howard*, 218 Kan. 248, Syl. 2, 544 P.2d 791 [1975]).

Additionally, “[w]hen separate statutes relate to the same subject matter, and class of things, they should be considered *in pari materia*.” *Bradley v. Board of Butler County Comm’rs*, 20 Kan. App. 2d 602, Syl. 4, 890 P.2d 1228 (1995). While K.S.A. 79-1476 deals with the classification of property for ad valorem tax purposes, and K.S.A. 79-3606 deals with exemptions from sales and compensating use taxes, both are tax statutes and, therefore, should be considered *in pari materia*.

In your letter you note that K.S.A. 79-201o and K.S.A. 79-219 provide for property tax exemptions for construction and mechanic’s hand tools. You suggest that, “The prevailing view is that only manually powered tools are exempt from the property tax.” We believe the opposite is true.

The Board of Tax Appeals [BOTA] has considered the question of what tools qualify as “hand tools” for purpose of K.S.A. 79-201o and K.S.A. 79-219. The BOTA has found the following items to be hand tools:

Hand saw; Blk plane; Sledge Hammer, Drill VX 3/8”; Drill VS ½”; Pop rivet tool 1/8”; Power saw 7 ¼”; Assorted saw blades; Saber saw; Router and bits; Wrecking bar 30”; Flat ripping bars; Caulking gun; C Clamps 10”; Putty knives; Tape measurer, 16’, 20’ and 25’; Cement trowel 14”; Edging and seaming trowel; Long handled spade; Short handled spade; Sharpshooter spade; Straight edge 54”; Level 48”; Level 24”; Hand saw 8-pt; Dremel tool; Cordless drill; Hammer - 22 oz.; Hammer - 20 oz.; Hammer - 16 oz.; Hydra jack 2 ton; Drop cord 100’; Drop cord 25’; Log chain 10’; Log chain 15’; Chain boomers; 40’ extension ladder; 6’ step ladder; 4’ step ladder; 2’ step ladder; Stihl 18” chainsaw; Bostich 80 framing nailer; Bostich 45 roofing nailer; Wagner airless paint spayer; 225 RJ Husquavarna weed trimmer; bead blaster; tool box grinder; dye grinder; screwdriver. (Emphasis added.)
[*In the Matter of the Application of Stude, Tim A*. (Docket No. 1998-2334-TX); *In the Matter of the Application of King, Doug* (Docket No. 1998-1509-TX); *In the Matter of the Application of B & B Radiator & Auto Air* (Docket No. 1998-1461-TX); *In the Matter of the Application of Krouse Custom Built* (Docket No. 1998-1129-TX)]

In the case of *In the Matter of the Application of King, Doug*, (Ibid) Leavenworth County recommended the airless paint sprayer be denied because the pump remained at the paint source away from the spray nozzle. The Board commented, at paragraph 6:

The Board finds that the paint sprayer, much like the nailers, can not function without a component part. The fact that the paint sprayer requires a pump for operation does not mean that it is not a hand tool.

As the forgoing indicates, the BOTA has found both manually operated tools and hand held power operated tools to be “hand tools” for purposes of exemption from property tax. When these statutes are read *in pari materia* with the controlling sales tax exemption statute, K.S.A. 79-3606(kk), it is clear the Department of Revenue’s interpretation of the term “hand tools” for sales tax purposes is correct.

Further support for the validity of our interpretation is found in the fact the Kansas Legislature has not acted to change the law on which our policy is based. During the 1998 Legislative Session, K.S.A. 79-3606 was amended three times; two of these amendments were to subsection (kk). [See L. 1998, ch. 130, § 31 and L. 1998, ch. 188, § 7.] Despite this legislative attention, however, and additional review of section (kk) during the 1999 session, the statutory reference to “hand tools” was not addressed.

Given the judicial and legislative support for our position, and length of time the Department’s definition of “hand tools” has been published and widely followed, we will continue to follow our current policy.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 01/04/2000 Date Modified: 10/10/2001**