

Gov & Dep
City

 CITY OF KEARNEY,)
 A municipal Nebraska corporation,)
)
 Plaintiff,)
)
 vs.)
)
 MURRELL B. McNEIL,)
 Nebr. State Tax Commissioner)
 & member of the Brd. of Equalization;)
 Governor NORBERT T. TIEMANN,)
 Member of the Brd. of Equalization;)
 FRANK MARSH,)
 Secretary of State)
 & member of the Brd. of Equalization;)
 WAYNE SWANSON,)
 State Treasurer)
 & member of the Brd. of Equalization;)
 RAY JOHNSON,)
 State Auditor)
 & member of the Brd. of Equalization;)
 C. A. H. MEYER,)
 Attorney General of State of Nebraska.)
)
 Defendants.)

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MEMORANDUM JOURNAL ENTRY
and
DECREE

This matter came on for hearing on February 9, 1972, and was submitted upon the pleadings, the record, and a motion by each party for judgment on the pleadings. The matter having been briefed and submitted, and the court, being fully advised, finds that the order of the State Board of Equalization and Assessment, dated October 17, 1969, should be reversed and the matter remanded to said Board for an assessment conforming to this order.

The court finds that during the period from June 1, 1967, through September 30, 1968, the plaintiff, City of Kearney, a municipal corporation, purchased certain office and computer equipment for use in certain of its lawful functions, said sales being in the amounts and at the times set forth in paragraph III of the petition herein; that the pleadings concede that the use of said goods was 80 per cent for the discharge of governmental functions of said city

and 20 per cent for the use of city-owned and -managed proprietary enterprises.

The court finds that the City of Kearney, as a municipal corporation, is exempted by statute from the sales and use tax levied by the Nebraska Revenue Act of 1967 for purchases of goods for use in its governmental capacity, except purchases of less than \$100.00. The court further finds that the purchase of goods for use in the proprietary enterprises of said city are not so exempt. The court finds, as a matter of law, that if the two said uses are commingled the entire transaction is subject to said taxes unless, as in this case, the relative percentage of each use may be accurately determined from records of the city. It is noted that no rules and regulations pursuant to the Nebraska Revenue Act of 1967 are pleaded herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the order of the State Board of Equalization and Assessment, dated October 17, 1969, is reversed, and, pursuant to the provisions of Section 34-917, R.R.S. 1943, as amended, the matter is remanded to said State Board of Equalization and Assessment for a proper assessment pursuant to law.

IT IS FURTHER ORDERED that interest on said assessment be limited to that accruing on the amount of the new assessment.

Costs herein are taxed to the defendants.

Dated at Lincoln, Nebraska, this _____ day of April 1972.

BY THE COURT:

District Judge