Approved: 3/16/93
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Vice Chairperson Kent Glasscock at 9:00 a.m. on March 12, 1993 in Room 519-S of the Capitol.

All members were present except:
Representative Grotewiel, excused
Representative Larkin, excused
Representative Rock, excused
Representative Roe, excused

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Bill Edds, Revisor of Statutes
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Ron Smith, Kansas Bar Association, for Tim O'Sullivan
Dan Gough, Clay Center City Council
Bill Lewis, Chairman, Clay County Economic Development Group
Larry Wallace, Clay Center Area Chamber of Commerce
Everett Girton, Clay County Commission
John Samples, President/CEO, Kan-Build, Inc., Osage City
Jeff Jones, Wardcraft Homes, Clay Center

Others attending: See attached list

Vice Chairperson Kent Glasscock opened the hearing on HB 2471.

HB 2471 Division and merger of trusts; marital deduction gifts.

Ron Smith, Kansas Bar Association, testified for Tim O'Sullivan in support of HB 2471. Mr. Smith said that this bill is needed because there is no existing statutory authority to allow Trust divisions for tax purposes which often forces Trustees to have to seek judicial authority to divide Trusts when the need arises for tax purposes. Mr. O'Sullivan requested in his written testimony that HB 2471 be amended on page 2, line 38, to remove after the words "dollar amount," the word "is." (Attachment 1).

Vice Chairperson Glasscock closed the hearing on HB 2471.

The Vice Chair opened the hearing on HB 2301.

HB 2301 Sales tax exemption for certain modular homes.

Dan Gough, Clay Center City Council, testified in support of HB 2301 and said that he is concerned with the situation faced by Wardcraft Homes, located in Clay Center. Mr. Gough stated that Wardcraft competes with other similar firms that are located in Nebraska, Colorado, and elsewhere that do not have a construction tax, which makes it hard for Wardcraft to sell homes outside Kansas. He said that approval of HB 2301 would help maintain jobs in Kansas and would encourage Wardcraft to expand in Clay Center (Attachment 2).

Bill Lewis, Clay County Economic Development Group, testified in support of HB 2301, stating that he is well aware of the financial stress placed upon Wardcraft Homes by this sales tax as it impacts their competitive sales in the state of Nebraska and others (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 12, 1993.

Larry Wallace, Clay Center Area Chamber of Commerce, testified in support of HB 2301. Mr. Wallace said that he is a Goodyear Tire dealer and that his business and others in Clay Center are directly affected by the sales tax imposed upon Wardcraft Homes (Attachment 4).

Everett Girton, Clay County Commission, testified in support of HB 2301 and said that Wardcraft pays a total of $17,830 in property taxes to Clay Center. If they are forced to build a satellite plant in Nebraska in order to stay competitive with companies in that state, Clay County will lose not only a portion of those property taxes, but the future expansion of approximately $250,000 (Attachment 5).

John Samples, Kan-Build, Inc., Osage City, testified in support of HB 2301 and said that mobile homes should not be excluded from sales tax on original construction as they are already exempt from sales tax on materials which the modular industry is not. According to Mr. Samples, Kan-Build, Inc. exports 65% of their products and employs over 200 people from seven counties. The 2.5% tax coupled with higher workers compensation rates compared to Nebraska and Iowa limits their ability to compete and create jobs (Attachment 6).

Jeff Jones, owner of Wardcraft Homes, testified in support of HB 2301 stating that the 2.5% tax is not in the best interest of his industry, the public home building industry or people wanting a new home. He said that this tax makes it even tougher to compete in states that do not have this tax (Attachment 7).

Written testimony in support of HB 2301 was submitted by Jerry Mayo, Chairman, Clay Center Main Street program (Attachment 8).

The Vice Chair closed the hearing on HB 2301.

The minutes of March 11, 1993, were approved.

The meeting adjourned at 9: 50 a.m.
The next meeting is scheduled for March 16, 1993.

Date: 8/12/93

GUEST REGISTER

HOUSE COMMITTEE ON
ASSESSMENT AND TAXATION

NAME	ORGANIZATION	ADDRESS	PHONE
NED VALENTINE	CLAY CENTER DISPATCH	BOX 519 CLAY CENTER, KS	632-2127
Rachelle Olson	AP	Topeka	
[illegible]	Kan Build Inc	Osage City	528-4163
Gary Clark	Rep Macy		232-6441
Larry Wallace	Clay Center Chamber	Clay Center Ks	632 5674
Todd Slagle	Clay Center Chamber of Commerce	Clay Center KS	632 5674
Marabeth Conner	" "	" "	"
Wm. E Lewis	Clay County Economic Dev. Group	Rt. 2 Clay Center KS	632-5321
EVERETT GIRTON	CLAY COUNTY COMMISSIONER	BX 606 Clay Center Ks	632-6273
STEVE LLOYD	1741 30th Rd PALMER, KS	House of Rep	692-4225
Kathe Storm	Clay Center Main Street	829 Frederick, Clay Center	632-5989
Dan [illegible]	Councilman Clay Center	1331 [illegible] Dr. CC	632-3122
Jeff Jones	Wardcraft Homes Inc	12727 Frontier Rd Olathe KS	884-5539
[illegible] BROWN	KS Lumber dealers	topeka	234-5500

MEMORANDUM

TO: Keith Roe and Members of the Taxation Committee of the Kansas House of Representatives

FROM: Timothy P. O'Sullivan, President, Real Estate Probate and Trust Section of the Kansas Bar Association

DATE: March 12, 1993

RE: H. B. 2471

Section 1 of H. B. 2471 permits Trustees, even in the absence of specific authority in the Trust Agreement, to divide a single Trust into separate Trusts for tax purposes.

This bill is needed because there is no existing statutory authority to allow Trust divisions for tax purposes. This failure often forces Trustees to have to seek judicial authority to divide Trusts when the need arises for tax purposes. Even then, the common law authority to approve such division is not so clearly defined as to insure that the petitioning Trustee's request will be honored by the courts. Even if the request is approved, significant legal fees would be incurred in the process.

The situations when divisions for tax purposes are desirable currently are primarily in the federal estate and federal generation-skipping tax areas. Without having authority to divide certain marital deduction trusts created for a surviving spouse or trusts created for other beneficiaries (normally children), significant additional federal estate and generation-skipping taxes may have to be paid on the death of a surviving spouse or other beneficiary.

Although the specifics as to why these additional taxes are incurred are too complex to recite here, principally it involves problems in allocating federal estate and generation-skipping tax exemptions and deductions to a trust which has assets in the trust exceeding the amount of such exemptions and deductions. Providing statutory authority for such division would allow the trusts to be divided into shares so that the deductions and exemptions are allocated to a trust share are equal in amount to the marital estate deduction allowed and generation-skipping tax exemption to be allocated.

It is important to keep in mind that the authority to divide Trusts for tax purposes does not include any authority to the Trustee to amend or in any way alter the administrative and dispositive provisions of the Trust, i.e., the manner in which

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Attachment 1

the Trust shares are to be invested, managed and distributed will remain unchanged. Further, such division cannot be effectuated without notice by the Trustee to affected income beneficiaries.

An additional provision in Section 1 permits similar authority to merge Trusts having identical provisions if to do so would generate tax savings.

This bill is patterned after other similar legislation being passed by other states to correct this problem. Although statutory authority is not needed where authority to divide Trusts is provided in the Trust Agreement, the reality is that estate and generation-skipping tax rules are so complex that a large number of tax and estate planning practitioners are simply failing to include such authority in the instrument. Moreover, in circumstances when there was no apparent need for such authority at the time of execution of the Trust Agreement, laws passed after execution of the Trust Agreement may make such authority desirable.

Section 2 of the bill is unrelated to Section 1. Also patterned after similar legislation in other states, it is designed for federal estate tax purposes to insure a marital estate tax deduction when marital deduction formula bequests are tied to federal estate tax values. Essentially, if a will or revocable trust provides that the fiduciary can use estate tax values in determining such bequests, unless the fiduciary is required in the instrument to be fair in allocating changes in values from date of death to date of distribution proportionately to the marital share, or existing state law so provides, the federal estate tax marital deduction may be disallowed. Section 2 provides this proportionality requirement in statutory form in the event the scrivener of the instrument fails to include it. Additional provisions in the Section require that the fiduciary manage and distribute assets only in a manner consistent with achieving a marital deduction for gift or estate tax purposes when the instrument clearly indicates that was the intent of the persons signing the document. In short, even if an instrument is not drafted properly, it helps insure a marital estate tax deduction will be allowed by the IRS, when same was intended, without adversely affecting the rights of any beneficiaries.

The Real Property, Probate and Trust Section of the Kansas Bar Association believes this bill should receive your favorable consideration.

skipping transfer taxes, or any other tax imposed on trust property. The trustee shall complete the trust merger by:

(1) Giving a written notice of the merger, not later than the 30th day before the effective date of the merger, to each beneficiary who might then be entitled to receive distributions from the separate trusts being merged or to each beneficiary who might be entitled to receive distributions from the separate trusts once the trusts are funded; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been merged pursuant to this section and that the notice requirements of this subsection have been satisfied.

(d) The trustee may divide or merge a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or merge any other trust before it is funded if the instrument establishing the trust is not revocable at the time of the division or merger.

Sec. 2. (a) As used in this section:

(1) "Marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the federal internal revenue code or the federal gift tax deduction allowed for transfers under section 2523 of the federal internal revenue code; and

(2) "marital deduction gift" means a transfer of property that is intended to qualify for the marital deduction.

(b) ~~If~~ an instrument contains a marital deduction gift:

(1) The provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the marital deduction provisions of the federal internal revenue code;

(2) the fiduciary shall not take any action or have any power that impairs the deduction as applied to the marital deduction gift;

(3) the marital deduction gift may be satisfied only with property that qualifies for the marital deduction; and

(4) with respect to marital deduction gifts which are under the terms of the instrument, whether determined by a formula or a fixed dollar amount, is in a pecuniary amount that is to be satisfied by distribution of assets at their values, as finally determined for federal estate tax purposes and the instrument does not otherwise require that such bequest at time of funding either be of an aggregate fair market value at least equal to such pecuniary amount or that the assets distributed in satisfaction of such bequest be fairly represen-

tative of appreciation or depreciation, as the case may be, of all assets available to satisfy such bequest, then such fiduciary shall be required to distribute assets in satisfaction of such marital deduction gift which are fairly representative of the depreciation or appreciation, as the case may be, of all assets available to satisfy such bequest.

(c) The provisions of this section shall have no effect on the administration or interpretation of marital deduction gifts made prior to their effective date.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

1/3

Remove the word "is" —
It's a gramatical amendment

Gough

HOUSE TAXATION COMMITTEE
HOUSE BILL #2301

I. WARDCRAFT SALES

A. 45% of sales in Kansas
B. 55% of sales out of Kansas
   1. Wardcraft competes with out of state firms that do not have a construction tax
C. $5.2 million in total sales (1992)
   1. 51.1% labor cost ($2.66 million labor cost, total sales)
   2. 55% out of state sales ($1.46 million labor cost, out of state sales)

II. POSSIBLE REVENUE GAIN ON EXPORTED HOMES

A.	2 1/2% State of Kansas	=	$36,500.00
B.	1/2% Clay County	=	$ 7,300.00
C.	1% City of Clay Center	=	$14,600.00

III. WARDCRAFT OUT OF STATE EXPANSION ?

A. Wardcraft annual salaries for 1992 ($1.3 million)
   1. 25% transfer of employees out of state
      a. $325,000.00 of salaries transferred out of state
   2. Potential sales tax revenue **loss**
      a. City of Clay Center sales tax - 1%
      b. Income multiplier of 5
      c. Sales tax loss to Clay Center $16,250.00
   3. Other tax **loss**
      a. State income tax
      b. Personal property tax
      c. Real estate taxes (expansion out of state)
   4. Union State Bank loss
      a. Customers
         1.) deposits
         2.) loans
      b. Interest income
         1.) business loans
         2.) personal loans

IV. CITY OF CLAY CENTER CHARTER ORDINANCE #12

A. Amend KSA 12-189 to <u>NOT</u> collect local sales tax on new construction
B. Business Tax Bureau (Ciardullo letter)
   1. Computer software limitations

V. HOUSE BILL #2301

A. Ordinance #12 shows support of Clay Center for approval of HB 2301
B. Approval of HB 2301 will help maintain jobs in the State of Kansas
C. Approval of HB 2301 will help to convince Wardcraft to make any future expansions in Clay Center
   1. Expansion in Clay Center would increase other tax revenues for the City, County and State

<u>PLEASE SUPPORT JOBS IN KANSAS AND VOTE YES ON HB 2301</u>

3/12/93

Dan Gough
Councilman
City of Clay Center, Kansas

Dan Gough
Senior Vice President
Union State Bank
Clay Center, Kansas

House Taxation Cmte Attachment 2

(First Published in the Clay Center Dispatch Thursday, August 20, 1992)

CHARTER ORDINANCE NO. 12

A CHARTER ORDINANCE EXEMPTING THE CITY OF CLAY CENTER, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-189, AS AMENDED, AS THE SAME RELATES TO THE APPLICATION AND COLLECTION OF LOCAL RETAILERS SALES TAX ON ORIGINAL CONSTRUCTION SERVICES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CLAY CENTER, KANSAS:

Section 1. That the City of Clay Center, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 12-189, as amended by 1992 Kan. Sess. Laws Chap. 198 §6 and Chap. 251 §2 and to provide substitute provisions as hereinafter set forth in this Charter Ordinance.

Section 2. Pursuant to 1992 Kan. Sess. Laws Chap. 280 §59, original construction services, as defined by said enactment, are subject to sales tax; however, the local retailers sales tax is no longer uniformly applicable to all cities because of amendments enacted in 1992 (1992 Kan. Sess. Laws Chap. 251 §1(a) and the City elects to exempt such services from the local retailers sales tax.

Section 3. The provisions of K.S.A. 12-189, amended as stated above, shall not apply to cause the assessment and collection of local retailers sales tax on the service of installing tangible personal property in connection with the original construction of a building or facility, as defined and as otherwise provided in 1992 Kan. Sess. Laws Chap. 280 §59.

Section 4. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 5. That this Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed, and a referendum is held on the ordinance as provided in Article 12, Section 5, subsection (c)(3) of the Constitution of the State of Kansas in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY by not less than two-thirds (2/3) of its members-elect voting in favor thereof, on this 18th day of August, 1992.

[signature]
MAYOR

CITY OF CLAY CENTER SEAL KANSAS

(SEAL)

ATTEST:

Calvin Wohler
CITY CLERK

2-2

December 21, 1992

Calvin Wohler
City Clerk
City of Clay Center
427 Court
P. O. Box 117
Clay Center, Kansas 67432

Re: Charter Ordinance Regarding Tax Exemption for Original Construction Services

Dear Mr. Wohler:

I have discussed the charter ordinance submitted by the City of Clay Center with the Secretary of Revenue and the General Counsel to determine whether the Department of Revenue has the necessary authority to implement the ordinance. The charter ordinance exempts original construction labor services from application of the Clay Center local retailers' sales tax. The ordinance was adopted after the Attorney General issued Opinion No. 92-96. That opinion concluded that a city may, pursuant to home rule authority, exempt original construction services from application of the local retailers' sales tax. We are unable to identify any statutory authority that would either allow the Department to implement a charter ordinance of this nature or establish procedural guidelines for its implementation.

Implementation of the charter ordinance would create additional administrative duties and responsibilities for the Department of Revenue. Some of these additional tasks include:

1. The Department would be required to notify all retailers (including contractors performing services in the City of Clay Center) of the different tax base in the City of Clay Center.

2. The sales tax returns and schedules must be revised to reflect the different tax base in the City of Clay Center.

3. The accounts receivable editing process would be required to be redesigned to account for the different tax base in the City of Clay Center to insure the proper distribution of local sales tax revenue.

4. Software used by the Department's sales tax auditors would be required to be revised to reflect the different tax bases among local units.

5. Audit reports prepared by the Department would need to be modified to reflect the additional details associated with variable local tax bases.

6. Additional audit time would be required to be devoted to field audits to determine the tax status of construction projects for local sales tax purposes.

7. Department resources would be diverted to educate retailers and contractors and answer inquiries concerning variations in the local tax bases.

It is clear these additional duties and responsibilities will cause the Department to incur additional costs to administer the local retailers' sales tax act on behalf of the City of Clay Center. None of these costs have been budgeted by the Department.

Article 12, Section 5(b) of the Kansas Constitution grants certain authority to cities to determine their local affairs. It provides:.

> "Cities are hereby empowered to determine their <u>local affairs</u> and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class..." (Emphasis added.)

While it is clear that cities may determine their local affairs, it is our opinion that they may not create additional duties for a state agency which are not specifically authorized by statute. It is widely accepted that state agencies are creatures of the state legislature and cities, even in the exercise of their extensive home rule powers, lack authority to impose administrative duties on state agencies, as such is not a matter of local concern within the meaning of Article 12, Section 5. See Attorney General Opinion No. 82-17, p.3.

K.S.A. 12-189, as amended by L. 1992, Ch. 198, §6 and Ch. 251, §2 provides in part:

> "Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in 12-189a, and amendments thereto, <u>such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act</u> and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable...".(Emphasis added.)

The Attorney General has previously opined that these statutory provisions constitute a legislative recognition of the obvious economy and efficiency which result from state collection of local sales taxes, thus avoiding the necessity of costly collection efforts by cities which merely duplicate the established efficient and effective resources already available in the Kansas Department of Revenue. However, the Attorney General also clearly states that "[T]he Secretary of

Revenue has no responsibility, however, to collect retailers' sales taxes unless such tax is . . . identical in its application and exemption therefrom to the Kansas retailers' sales tax act." See Attorney General Opinion. No. 76-287, p.7.

The 1992 Special Committee on Assessment and Taxation reviewed Attorney General Opinion No. 92-96. It was the Committee's finding that cities were never intended to have the ability to charter out of the statutory provisions establishing a uniform tax base for local sales tax purposes. The Committee then voted to introduce a bill to reestablish uniformity in the local sales tax statutes. Since there was never any legislative intent to allow cities to establish non-uniform tax bases, no statutory authority has ever been granted to the Department to implement charter ordinances establishing such non-uniform bases.

In conclusion, since the Department is without statutory authority to implement a charter ordinance such as you have submitted and is not required to collect a local tax which is not identical in its application to the state sales tax, the Department will take no action to notify retailers of the proposed exemption of original construction labor services by the City of Clay Center. Legislative authorization will be required before the Department will undertake the additional duties associated with implementing charter ordinances of this nature. Any questions regarding the legal basis for the Department's position should be directed to the Department's General Counsel, Mark A. Burghart, at 913 296-2381.

Sincerely,

Mark Ciardullo

Mark Ciardullo, Chief
Business Tax Bureau

cc: Special Committee on Assessment and Taxation

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To: Chairman Keith Roe
Ladies & Gentlemen of the House Taxation Committee

From: Wm. E. Lewis, Chairman of Clay County Economic Development Group

Speaking in favor of House Bill # ~~32~~ 2301: to repeal the tax on exported construction.

As a new resident of Clay County, having moved here in 1986 from Missouri, I asked several people who the major industrial employers of the area were and was usually told Hutchinson, G.T., Wardcraft Homes, Jentronics and Key Milling. Now only seven years later, we have lost Jentronics, most of Key Milling, most of G.T. and much of Hutchinson. Wardcraft Homes remains as a stalwart of our economic community.

As chairman of the Clay County Economic Development Group, I am well aware of the financial stress placed upon Wardcraft Homes by this tax as it impacts their competitive sales in the state of Nebraska and others. We spend considerable time and money in our efforts to bring new employment to Clay County. I would truly be ashamed to see a good industry stall or even move, in part, because of a tax that does not generate as much money as does the pay checks of employed people.

For our Economic Development Group, jobs is the bottom line and I believe this has to be given as a top priority by both the Legislature and the Governor. This being the case, it would seem to me that a reasonable thing to do would be to take such action as would help the job market in our state without doing harm to others.

Thank you.

Wm. E. Lewis

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Larry Wallace

CLAY CENTER AREA CHAMBER OF COMMERCE
CLAY CENTER AREA BUSINESSES
* WANT TO KEEP WARDCRAFT HOMES

- Directly affects businesses by purchases
- Indirectly affects by employees purchases
- $17,463.50 spent at one business alone = $1,117.66 sales tax
- $12,146.53 in 1991 and $9,416.49 shows growing, expanding business
- Upwards of $20,000 spent on truck tires = $ collected in fuel tax
- Truck tires are Goodyear manufactured in Topeka
- Snowball effect on Clay Center
- Loss of Wardcraft employees = loss of employees in other businesses
- Wardcraft helped Clay Center back on it's feet
- Wardcraft took weak business and built into strong one
  should try to keep businesses like that instead of penalizing
- Clay Center NEEDS Wardcraft Homes
- Please pass House Bill 2301

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MEMBERS OF BOARD

Dist. 1, W. Harvey Pfizenmaier, Green   Dist. 2, Everett N. Girton, Clay Center   Dist. 3, Vernon C. Wendelken, Wakefield

OFFICE OF COUNTY COMMISSIONERS

CLAY COUNTY
P.O. BOX 98
CLAY CENTER, KANSAS 67432

TO: Representative Keith Roe, Chairman

RE: HB 2301

Ladies and Gentlemen of the Taxation Committee

I am Everett Girton, Clay County Commissioner, Clay Center, Kansas.

I appear before you today as a proponent for HB 2301 to repeal sales tax on modular homes exported to another state.

Wardcraft Homes of Clay Center, Kansas pays a total of $17,830 in property taxes to Clay County. If they are forced to build a satellite plant in Nebraska, in order to stay competitive with companies in that state, Clay County will not only lose a portion of the $17,830 in taxes, but the future expansion of approximately $250,000.

With the tax lid placed on county government, Clay County cannot afford to lose this assessed valuation or the additional jobs and growth this expansion would bring to the county.

Thank you for granting me this privilege of addressing the taxation committee.

Respectfully,

Everett Girton
Clay County Commissioner

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Attachment 5

The Clay Center Dispatch
Vol. 99 ...dnesday, March 10, 1993 46

Clay Center Publishing, Co. Publisher
H.E. Valentine, Jr., Editor
Wayne Cutley, News Edi...
Jeannine Anderson, Advertising Direc...

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MEMBERS OF
THE ASSOCIATED PRESS
KANSAS PRESS ASSOCIATION
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Editorial

Simple truth

Several Clay Center citizens will testify Friday in support of a bill in the Kansas Legislature that will help Wardcraft Homes expand jobs here at home.

The bill, authored by Rep. Steve Lloyd, would permit Wardcraft to sell their homes out of state without having to charge the state and local sales tax that adds about $1,200 to the price of the average home.

More than half of Wardcraft's sales are in Colorado and Nebraska which have no sales tax on new construction, a fact which puts the locally built homes at a $1,200 disadvantage to Wardcraft's competitors in those states.

In fact, no other state in the immediate region has a sales tax on new construction of any kind, let alone just for export. Just Kansas.

Although Wardcraft would like to expand operations here to accommodate the increased sales, the $1200 per house sting is forcing them to look at sites in Nebraska for expansion. And Nebraskans have been very accommodating.

The tax is particularly burdensome with the 40 percent increase in lumber prices the industry has experienced in the past eight months.

Wardcraft president Terri Jones says the company likes Clay Center and the employees here. And a remote second site would involve some additional costs that might be prevented by expanding here.

Nevertheless, the temptation to put a plant in a more hospitable business climate must be strong.

It is the simplest example of one of the simplest truths in a capitalist system. Taxation destroys productive jobs.

"If we lose sales, we lose jobs," Terri said recently.

Let's hope that simple truth isn't lost on the House Assessment and Taxation Committee Friday. *—NV*

5-2

KAN-BUILD, INC.

NICHOLS ROAD & HWY 31 EAST • OSAGE CITY, KS 66523 • 1-800-343-2783 • 913-528-4163 • FAX 913-528-4795

March 11, 1993

KAN BUILD, INC.
COMMENTS ON HOUSE BILL #2301

Kan Build, Inc. supports the repeal of the 2.5% tax on labor on original construction within the State of Kansas as well as taxing labor on modular products exported outside the State of Kansas.

Kan Build, Inc. exports 65% of our products and employs 200 plus people from seven counties. This 2.5% tax coupled with higher workers compensation rates more than Nebraska or Iowa limits our ability to compete and create jobs.

From the time the 2.5% tax was imposed last year, orders decreased from 1991 in Kansas and the states with lower workers compensation rates. This represented approximately a 10% decrease from 1991 sales. During this same period sales climbed in the other states in which we market.

Mobile homes should not be excluded from this original construction as they are already exempt from sales tax on materials which the modular industry is not. This borders on discrimination. Modular builders are more than bearing their share of taxes.

Currently all materials are taxed by Kansas even if the modular building is sold out of state. We are the only segment of Kansas manufacturing being so taxed. In addition, Kansas is the only state doing so, thus creating an uneven playing field for home grown industry. It is my opinion that dealers and manufacturers shipping into Kansas are ignoring the 2.5% tax based upon facts presented to me. (no documentation)

This 2.5% tax is creating a very uneven playing field and will cost Kansas jobs. In my opinion interstate suppliers will be impossible to monitor and will dump products into our state. Legislators have told me that the intent of the original bill was to tax labor performed on site and not for components. If this was the case a clarification would solve this grievous error. I realize House Bill 2301 does not address all of these issues but it should, to keep our industry viable.

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Attachment 6

KAN-BUILD, INC.

NICHOLS ROAD & HWY 31 EAST • OSAGE CITY, KS 66523 • 1-800-343-2783 • 913-528-4163 • FAX 913-528-4795

Once again, Kan Build, Inc. supports a level field for competition and requests the repeal of the 2.5% tax on original construction labor interstate and intrastate.

Sincerely,

John Samples
President/C.E.O.

JS/dp

Wardcraft Homes

P.O. Box 55
Clay Center, Ks. 67432

913-632-5664
South Highway 15

March 11, 1993

Dear Chairman Keith Rowe and Ladies and Gentlemen of the Taxation Committee;

Wardcraft Homes, Inc. was founded in 1971 in Clay Center, Kansas. A Kansas corporation employing about eighty (80) people which generates about $5,000,000 in gross revenue annually, Wardcraft constructs custom built homes and delivers them as a single unit to customers throughout Kansas, Nebraska, and Colorado. A Wardcraft home differs from a mobile home in three major ways: 1) Wardcraft builds to the Uniform Building Code (U.B.C.); mobile homes are built to the H.U.D. code. 2) Wardcraft Homes are delivered as a single unit, up to 28 feet wide by 60 feet long; mobile homes are delivered in sections up to 16 feet wide and put together at the site. 3) Wardcraft Homes are financed and taxed as real estate; mobile homes are financed and taxed as personal property.

Wardcraft hopes that the 1993 legislature will repeal the 2.5% sales tax on labor for new construction. We do not think the tax is in the best interest of our industry, the public home building industry or people wanting a new home. However, we are here today to request that you at least exempt our exported product from this tax. Because 55% of what we build in Kansas is exported, the $1,000.00 this tax adds to our average house, gives our competition in Nebraska and Colorado a $1,000.00 advantage over us. The housing market is a very competitive industry. On the 98 homes we built last year, we only realized 3.5% profit. This tax makes it even tougher to compete in states that do not have this tax. It has forced us to seek out various cities in Nebraska that would like and would pay for us to start a second plant at their locations. $1,000.00 per house might not sound like a lot to you, but homeowners are upset. We are here today to ask you to help keep our exported products competitive and help keep jobs in Kansas!

Also, when the new tax law went into effect, no one in government was able to explain to us how it affected Wardcraft Homes, Inc. We had to spend approximately $5,000.00 with lawyers and accountants, trying to get an explanation of the tax and how it should be implemented. After months of research and hundreds of telephone calls, we began to see some light at the end of the tunnel.

3/12/93
House Taxation Comte
Attachment 7

We requested, and received, from the City of Clay Center, relief from the 1% city tax over which they had control. Then, after having been granted this request, to our utter amazement we received from the State of Kansas, Department of Revenue, the enclosed letter indicating that this 1% tax would have to be reinstated, because the state was unable to handle this exception! Dumbfounded by this attitude, we are here today to plead for exemption from the tax for our exported homes. Please help keep the jobs and money in Kansas. Thank you.

Jeff & Terri Jones

Mayo's
Department Store

March 10, 1993

Chairman Roe, Ladies and Gentlemen of the House Taxation Committee:

As a local business owner and the chairman of our newly formed Clay Center Main Street program, I am writing this in an effort to persuade you to eliminate the sales tax on new construction of homes for shipment outside the State of Kansas.

A local firm, Wardcraft Homes, is an important employer in our community and contributes substantially to our local economy. The current sales tax situation places them in a position where is it extremely difficult to compete with firms outside the state where the sales tax is not applied to new construction. I understand that Wardcraft Homes is seriously being pursued by economic development concerns from neighboring states. And they are considering a move of part of their operation to be in a more favorable competitive position.

Wardcraft is a very important segment to our local economy. If we loose them, even a portion of the plant, it puts a substantial percentage of our population out of work. We currently have a population of around 4500 people with Wardcraft employing in excess of 80 people. If Wardcraft were to move a portion of the plant, we stand to loose a segment of our work force but more importantly, we loose the economic factors which go along with wage earners and economic development.

With losing this number of wage earners, primary wage earners, it will be detrimental to our local economy. And the cost to our economy will be great. Especially when you consider the loss of sales, property tax, sales tax, and the economic turnover (which I believe to be 7 times) that the wages paid to these employees produces.

We have worked very hard to boost the economy of our city. We need every advantage we can garner. The sales tax on new construction puts Wardcraft at a very great disadvantage. When you add an average of $1200.00 to the price of a home solely for a tax, it makes a big impact on where you purchase that home.

3/12/93
House Taxation Cmte
Attachment 8

717 Fifth Street, Clay Center, KS 67432 913-632-2656

If you're in another state purchasing a home and are going to spend a set amount on a home, you're going to be forced into a position of either paying $1200.00 in sales tax to a state where you're receiving absolutely no benefit at all or putting that extra $1200.00 into some additional features in the home or putting that same amount in your back pocket. The choice really isn't much of a choice at all.

This extra tax puts Wardcraft Homes at an unfair disadvantage. As a business owner and a citizen I believe that the sales tax on new construction is a very regressive tax in itself. This tax discourages new home construction. I know that if I were to consider building a new home, this would definitely have a big impact on my decision whether to build or not.

I'm sure that the revenue produced by such a tax is very enticing to the State, but I believe even stronger that it damages the economy, locally and statewide. And I'm sure that the State of Kansas vitally needs the economic impact of a growing, thriving housing industry, with the economic benefits it produces, much more that it needs the revenue produced by the sales tax on new homes sold outside the state.

I would appreciate your close attention and your favorable recommendation to removing the sales tax on new homes sold outside the state.

Thank you for your time and hopefully favorable response.

Sincerely,

Jerry Mayo

Jerry Mayo