Approved: 2/2/94
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Keith Roe at 9:00 a.m. on February 3, 1994 in Room 519-S of the Capitol.

All members were present except: Representative Adkins, excused
Representative Empson, excused
Representative Lowther, excused

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

Conferees appearing before the committee:

Ron Smith - Kansas Bar Association
Bill Martin - Smith Center State Bank & Trust Co.
Randy Hearrell - Kansas Judicial Council

Others attending: See attached list

Chairperson Roe announced that there would be no Committee meeting tomorrow, February 4, 1994.

The Chair opened the hearing on HB 2471.

HB 2471 - division and merger of trusts; marital deduction gifts.

Ron Smith, Kansas Bar Association, appeared before the Committee to introduce Bill Martin, Smith Center State Bank & Trust Co.

Bill Martin, Trust Officer, Smith Center State Bank & Trust Co., presented the Kansas Bar Association's testimony in support of HB 2471. Mr. Martin said that the main focus of the bill is in two basic parts: (1) the ability of a trustee to divide merged trusts, and (2) to qualify trusts for the marital deduction, and he said he views these as savings mechanisms. Mr. Martin requested the effective date of the proposed legislation be amended to the Kansas register (Attachment 1).

Randy Hearrell, Kansas Judicial Council, testified that the Council and its Probate Law Advisory Committee are in support of HB 2471.

Chairperson Roe concluded the hearing on HB 2471.

The meeting adjourned at 9:25 a.m.
The next meeting is scheduled for February 7, 1994.

HOUSE TAXATION COMMITTEE

DATE 2/3/94

NAME	ADDRESS	REPRESENTING
William Q. Martin	136 S. Main Smith Center	KBA
Ron Smith	Topeka	Ks Bar Assoc
Randy M. Hearrell	Topeka	KS Judicial Council
W. Michell O'Brien	Topeka	atty. Jan Small
Gena McFarland	Overland Park	OP Chamber
Sue Leobetta	Wichita	NOW

KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: *Rep. Keith Roe, House Taxation Committee*

FROM: *Ron Smith, KBA General Counsel*

SUBJ: *HB 2471, marital trusts*

My name is Bill Martin and I am General Counsel and Trust Officer for the Smith County State Bank & Trust Company, Smith Center Kansas. I currently serve as Secretary and the Legislative Chair of the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association. My appearance is at the request of and on behalf of the Kansas Bar Association.

I handle tax and legal matters affecting trusts and wills for which the Smith County State Bank & Trust Company serves in a fiduciary capacity. In my position, I also direct and review and administer assets and investments held by the Smith County State Bank & Trust Company as a trustee or other fiduciary position.

HB 2471 proposes legislation to provide a "savings mechanism" for trusts, the nature of this proposed legislation covers two general concepts as follows:

I. Division and Merger of Trusts

Lines 12 through 43 of the first page of the bill and lines 1 through 19 of the second page address the ability of a trustee to divide and merge trusts. The major advantage of division and merger of trusts is to decrease the amount of federal income, gift, estate and generation skipping transfer taxes that may be incurred without the ability to merge or divide trusts.

The most obvious advantage for this technique is in the generation-skipping transfer tax area. Under this GST tax, a trust can have an "inclusion ratio" of either:

(a) zero (completely except from tax);
(b) 1 (completely subject to tax) or,
(c) between zero and 1 (partially subject to tax).

To the extent possible all trusts should have an inclusion ratio that is either 1 or zero to avoid the administrative and investment complications posed by a partially exempt generation skipping trust. For example distributions to a child from a par-

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

2/3/94
House Taxation Cmte
Attachment 1

tially exempt trust will waste a portion of the exemption, while distributions to a grandchild from the same trust will be subject to tax.

• Division: If a trust instrument has not been drafted to specifically allow for such a division of trusts, then the trustee and trust beneficiaries will face cumbersome and possibly costly tax and administrative difficulties.

• Merger: trusts with different inclusion ratios should not be merged but merging trusts with the same ratio will not hinder the administration or tax status of trusts.

The ability to merge and divide trusts can also assist in the income tax and estate and gift tax area, especially qualifying trusts for the marital deduction QTIP trust.

Enactment of HB 2471 will provide a trustee with the ability to accomplish this merger and division of trusts in the event the scrivener of the original trust document did not properly provide for this power.

II. Marital Deduction

Lines 20 through 43 of page 2, and lines 1 through 10 of page 3 address the issue of marital deduction. Property held in trust is often structured to qualify for the estate tax "marital deduction." This allows the trustee to defer the payment of federal estate tax on this property until the death of the surviving spouse.

In order to qualify for the marital deduction the trustee and/or the surviving spouse must have certain powers over the trust property. The trust must also meet certain funding requirements in order to have the trust property comply with this marital deduction.

HB 2471 provides some added savings mechanisms to help insure that trusts which are designed to qualify for the marital deduction do in fact so qualify.

a. *General.* Section 2(b)(1) to (b)(3) contains general savings language in the event such language is omitted from a trust that is designed to qualify for the marital deduction.

b. *Rev. Proc. 64-19.* Section 2(b)(4) is intended ton insure that the funding of a marital deduction trust can comply with IRS revenue procedure 64-19. Under the terms of this IRS ruling, should the funding method for the trust not be correctly stated under the terms of the trust instrument, then the marital deduction may be unavailable for the entire trust.

Enactment of HB 2471 will provide a trustee with the ability to accomplish this funding of a marital trust in the event the scrivener of the original trust instrument did not properly draft the funding mechanism.

The Probate, Real Estate and Trust Law Section and the KBA Board of Governors support the enactment of HB 2471.

AMENDMENT

I would further request the effective date of the proposed legislation be amended to the Kansas register. There are certainly trusts throughout the state that may need the immediate benefit of this legislation.

Thank you.