

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on April 4, 2002 in Room 519-S of the Capitol.

All members were present.

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor
Winnie Crapson, Secretary

Conferrees appearing before the Committee:

Senator Brownlee
Ed Eilert, Mayor, Overland Park
Ed O'Malley, Overland Park Chamber of Commerce
Kathy Damron, Waddell & Reed
Richard Kaplan, Northeast Johnson County Retention Council

Others Attending: See attached list.

Without objection bill will be introduced at the request of Representative Larkin to decouple Kansas from the federal economic stimulus legislation. [HB 3037 - Bonus depreciation deduction disallowed for income tax purposes]

Representative Gatewood moved, Representative Larkin seconded, to approve Minutes for February 19, February 20, March 27, March 28, and March 29. Motion adopted.

Hearing was opened on

SB 501 - Investment funds service company business income apportionment for income tax purposes.

Ed Eilert, Mayor, presented testimony in support of **SB 501** on behalf of the City of Overland Park (Attachment #1). Mr. Eilert said the bill as amended by the Senate would allow investment funds service corporations to adjust how they calculate Kansas corporate income tax on their headquarters and branch facilities with at least one hundred employees. This would provide Kansas the opportunity to compete for companies in this high-growth sector of the economy. The City can attest to the benefit of having in the state an investment funds service corporation such as Waddell & Reed which is presently headquartered in Overland Park which employs 600 people with an average salary of \$100,000. He believes passage of **SB 501** is more important than the potential loss of one company because it would send a message to business in Kansas and nationwide that Kansas is a state that works not only to attract new business but also works with existing businesses to help them grow.

Representative Brownlee presented testimony in support of **SB 501** (Attachment #2). Senator Brownlee testified she had served on the Interim Tax Committee that studied a similar bill (**HB 2061**) relating to "source state" taxing of mutual fund companies. She said over ten states offer the tax treatment proposed and called attention to the Senate amendment to **SB 501** that would benefit companies with branch facilities employing at least 100 persons. Senator Brownlee estimated the fiscal impact on Kansas should the company relocate at \$9 million.

Committee adjourned at 9:30 a.m. and reconvened at 3:00 p.m. and the hearing was continued.

Ed O'Malley presented testimony in support of **SB 501** on behalf of the Overland Park Chamber of Commerce (Attachment #3). The testimony included a report from Country Economic Research Institute outlining the ripple effect relocation of Waddell & Reed would have on the Johnson County and Kansas economies. Also included was a letter from Dean Development Inc. describing their attempts to attract a California-based mortgage company which moved to Missouri due to this difference in tax policy. Mr. O'Malley said at a time when quality job creation and retention is seen as the key to economic recovery, Overland Park is struggling with the Kansas tax policy on mutual fund companies

CONTINUATION SHEET

because if headquartered in Kansas they pay income tax on all income, not just income generated in Kansas. This is contrary to tax law in other states, including Missouri. He testified the Overland Park Chamber of Commerce supports the recommendation of the 2001 Kansas interim committee to phase-in source state taxation for such companies. He noted that banks and insurance companies, which offer many of the same products and services, enjoy favorable tax policy.

In response to questions, Mr. O'Malley said this was not a problem when in 1990 Waddell & Reed moved four hundred employees to Overland Park because it was not the headquarters of the company. When asked if this legislation would apply only to Waddell & Reed, Mr. O'Malley said it would benefit other mutual fund companies who might locate their headquarters in Kansas including the California company he referred to by Dean Development in the letter attached to his testimony.

When asked about local incentives for Waddell & Reed, Mr. O'Malley said the most help that could be given locally would be property tax abatement and they lease their premises. He noted the three properties in Overland Park who do receive property tax abatement assistance are Sprint, Universal Underwriters, and Black & Veatch all of whom own their headquarters facilities.

Kathy Damron presented oral testimony in support of **SB 501**. She said John Martin, who was present, had been with Waddell & Reed for a number of years and would be able to respond to questions she might be unable to answer. Ms. Damron noted one question that arose during the hearing was whether or not it was too late, whether the company has already decided to go to Missouri or Texas. She said it was not too late and that no leases have been signed. She reported discussions before the Interim Committee.

Representative Palmer referred to sub-committee study of the bill last year when the Department of Revenue thought Waddell & Reed needed to apply under the current statute and be able to get that tax relief if they needed it. Ms. Damron referred to a letter from the Department of Revenue clarifying a misconception that it was a matter of being unfairly taxed (Attachment #4).

Mr. Cram of the Department of Revenue said that had it been an issue under the three-factor formula the taxpayer could show that it does not accurately reflect activity in Kansas. Waddell & Reed met with Secretary Richards and indicated they were not arguing the three-factor formula was unfair but it was the question of much greater relief under the fact Missouri law gives them much greater relief than under Kansas law and the economic disparity of that.

Representative Huff noted **SB 501** passed the Senate 38-2 and asked if something in that discussion was absent here. Ms. Damron said the interim committee identified problems with the bill last year, considered it too broad, and the original bill was changed in the Senate process resulting in **SB 501**.

In response to questions, Ms. Damron said she believed last year about half the employees lived in Missouri. She said they leased the building they occupy and did not know when the lease would expire.

She was asked about the Missouri law and explained that it was changed about three years ago on behalf of American Century. The bill now before the Missouri General Assembly relates to the annual certification in Missouri. She noted Missouri already has a strong mutual fund industry and hope if this bill were to pass Kansas could be similarly situated as an attractive state.

When asked about a personal income tax accelerator she said she had no estimate of benefits but that Senator Brownlee has calculated just over \$9 million. The Department of Commerce and Housing has another formula which projects an even larger number taking into consideration taxes paid to services and vendors used in the Kansas area. Regarding concerns that the company might request further tax cuts later, Ms. Damron suggested exploring an agreement with the company that they would not seek such further tax changes.

Written testimony was received in support of **SB 501** by Richard Caplan, Executive Director, Development and Retention Council of Northeast Johnson County, representing nine cities (Attachment #5).

Hearing on SB 501 was closed.

CONTINUATION SHEET

Hearing was opened on**SB 575 - Income tax withholding required upon certain income distributions and prize money.**

Rep Larkin said it was a good bill but he would like to propose an amendment (Attachment #6) modeled on changes Missouri has made in their law as a result of their Supreme Court decisions.

Representative Larkin moved, Representative Gatewood seconded, that SB 575 be amended as proposed in balloon. Motion was adopted.

Mr. Cram said with reference to the Missouri cases cited April 2, *Swift* set out six factors that determined whether there is a nexus between the state and the trust itself. Residence at the time of death, where trust is administered, location of beneficiaries, residence of trustee, and location of assets of the trust.

Representative Larkin said it was anticipated the fiscal note would be positive fiscal note but no number was given. The amendment closes the loophole that a trust administered in Missouri is not subject to Kansas tax.

Representative Wilson moved, Representative Gatewood seconded, to amend SB 575 to be effective upon publication. Motion was withdrawn.**Representative Wilson moved, Representative Larkin seconded, to amend SB 575 to make it effective upon publication for all provisions. Motion was adopted.****Representative Larkin moved, Representative Sharp seconded, to report SB 575 favorable for passage as amended. Motion was adopted.****Representative T. Powell moved, Representative Gatewood, seconded to amend HB 3032 with the intent to have modified situs the effect of which would be that a taxpayer purchasing a vehicle in a jurisdiction with lower sales tax would pay the difference when registering it in their home community.****Representative Larkin offered a substitute motion, seconded by Representative L. Powell, to advance HB 3032. Motion failed.**

Concern was expressed about considering this change this late in the session without opportunity to talk it over with the Department of Revenue.

Representative Owens moved, Representative Palmer seconded, to table HB 3032. Motion failed.**Motion of T. Powell to amend was adopted.****Representative T. Powell moved, Representative Osborne seconded, that HB 3032 be reported favorable for passage as amended. Motion adopted. Representative Palmer voted no.**

Meeting ended at 5:00 p.m. Next meeting is April 5.

GUEST LIST

DATE April 4, 2002

NAME	REPRESENTING
George Peterson	Ks Taxpayers Network
Ron Caches	CBBA
DON L. McNEELY	KS Automobile Dealers Assn.
LARRY R. BAER	CKM
Mike Recht	AT&T
Stuart Little	City of Merriam
Debbie Clark	Hallmark Cards
Ed O'Malley	OP Chamber
John Martin	Waddell & Reed
Pat Dawson	Waddell & Reed
RaeAnne Davis	KDOCH
Don Seifert	City of Olathe
Michelle Peterson	Ks Governmental Consulting
Ann Danks	Dops
Mike Reporan	Sedwick Comb
Paul Peterson	Ks Taxpayers Network
Kevin Brownlee	Ks Senate
Harold Johnson	Wichita Auto Dealers
Jim Hutton	DON HUTTON CHEVY
JIM CLARK	JIM CLARK AUTO
Pam Sommerville	Wichita Cam Dealers
Erik Sartorius	City of Overland Park



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Testimony Before The
House Taxation Committee
Regarding Senate Bill 501

April 4, 2002

Mr. Chairman and members of the Taxation Committee, good morning. I am Ed Eilert, Mayor of the City of Overland Park. I appreciate the opportunity to offer my comments.

We strongly support Senate Bill 501, which would allow investment funds service corporations to adjust how they calculate Kansas corporation income tax. As amended by the Senate, this calculation method would extend not only to headquarters of such corporations, but also branch facilities with at least 100 employees. The bill provides Kansas the opportunity to compete for companies in a high-growth sector of the economy.

We can attest to the benefit of having an investment funds service corporation in the state, as Waddell & Reed is headquartered in Overland Park. As you probably know, this company employs 600 people with an average salary of \$100,000. Letting slip away a company with high-skill, high-paying jobs would be unfortunate. More important than the loss of a single company, however, would be the message sent to businesses both in Kansas and nationwide.

As such, I would caution the committee against seeing Senate Bill 501 as legislation solely benefiting investment funds service corporations. Rather, SB 501 is bigger than that. Being seen as a state that works not only to attract new businesses and ideas to the state, but also works with existing businesses to help them grow, benefits Kansas and its reputation with the business community throughout the country.

Again, thank you for the opportunity to appear before the committee. We ask for your favorable consideration of Senate Bill 501.

House Tax 4-04-02
Attach. No. 1
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 SENATOR, 23RD DISTRICT
 JOHNSON & MIAMI COUNTIES
 1232 S. LINDENWOOD DR.
 OLATHE, KANSAS 66062
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TOPEKA

SENATE CHAMBER

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 UTILITIES
 ELECTIONS & LOCAL GOVERNMENT
 JOINT COMMITTEES
 LEGISLATIVE RULES & REGULATIONS
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TESTIMONY ON SB 501 - WADDELL & REED

HOUSE TAX COMMITTEE

SENATOR KARIN BROWNLEE

APRIL 4, 2002

Providing a tax break to a business raises more than an eyebrow given the economic climate we are now experiencing in Kansas. However, the merits of this legislation became clear to me after serving on the Interim Tax Committee last year. Utilizing a "source state" taxing mechanism for a mutual fund company makes sense as it allows only that income which is held in Kansas to be subject to taxation in Kansas.

The net effect of this legislation is that it would allow Waddell & Reed to experience a \$2 million tax cut in FY03 and \$4 million in subsequent years. Because more than ten other states also offer this tax treatment and a few of these states are recruiting Waddell & Reed to reside in their state, the true fiscal impact on Kansas would be more than \$9 million should this company choose to part company with Kansas. Any fiscal impact is hard to swallow but two million is better than nine million.

In trying to answer the question as to how many companies might benefit from this legislation, we need to understand that there are different types of companies that have 'assets under management.' It is my understanding that other companies in Kansas in this category are taxed under the premium tax mechanism because they are considered to be insurance companies. Waddell & Reed is the only company I know of that would benefit from this bill. However, because of the amendment added in the Senate Commerce committee, those companies with branch facilities employing at least 100 persons would also benefit. We recently lost a prospect in this category. We have the opportunity here to attract other prospects such as American Century who is just across the state line. Kansas City business newspapers have reported the possibility of American Century expanding. This company has 82,000 investors in Kansas. What a benefit this would be to attract this company and others to Kansas.

In closing, thank you for having this hearing and for considering this legislation which is different than what you looked at last year. It is time to put the bait on the hook and reel in some prospective businesses of this kind and keep the one we have.

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 Attach. No. 2
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Testimony for the House Taxation Committee
April 4, 2002

Ed O'Malley
Government Relations Manager
Overland Park Chamber of Commerce

Mr. Chairman and members of the committee, my name is Ed O'Malley. I am the Government Relations Manager for the Overland Park Chamber of Commerce. I appreciate the opportunity to speak with you about the Kansas tax policy for mutual fund companies.

During a time when quality job creation and retention is seen as the key to economic recovery, Overland Park is struggling with the Kansas tax policy on mutual fund companies. In short, mutual fund companies headquartered in Kansas must pay income tax on all income, not just income generated in the Kansas. This is contrary to the tax policy in other states, including our neighbor Missouri.

As you know, Overland Park and Johnson County compete with Missouri for companies and high quality jobs. The Kansas tax policy for mutual fund companies puts us at a disadvantage to Missouri when trying to recruit and retain the high quality jobs of this industry. Johnson County's educated workforce, affordable housing, plentiful shopping, superb K-12 education system and an overall high quality of life are enough to lure many companies to our county. However, this is apparently not enough to recruit and retain the high paying jobs of the mutual fund industry.

The Overland Park Chamber of Commerce supports the 2001 Kansas interim committee recommendation to phase-in source state taxation for investment service fund companies. Keeping in mind banks and insurance companies, which offer many of the same products and services as mutual fund companies, already enjoy favorable tax policy, we encourage the Legislature to level the playing field for investment fund companies.

Waddell & Reed has publicly stated it is looking to relocate outside of Kansas because of this policy. This was not a problem when Waddell & Reed first moved 400 employees to Overland Park in the 1990s because it was not yet a headquarters operation. The business community was please when it became a headquarters a few years ago, but was also concerned about our ability to keep the company in Kansas. Waddell & Reed currently employs 650 people in Overland Park with an average salary of \$100,000.

Another mutual fund company had been strongly considering a move to Overland Park, but recently decided to locate elsewhere because of this tax policy. That company has about 300 jobs with an average salary of \$45,000 and wanted to make a capital investment of \$8-12 million. Attracting headquarters of this type has been greatly hindered by this policy.

Again, when quality job creation and retention is seen as the key to economic recovery, we are disappointed and concerned that Overland Park and Kansas are unable to retain and recruit these high quality jobs. Our members encourage you to support SB 501 favorable for passage.

Mr. Chairman, thank you for allowing me to address the committee.

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Attach. No. 3
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www.southcreekoofficepark.com

April 2, 2002

The Honorable Karin Brownlee
Kansas State Senate
State Capitol
Topeka, Kansas 66612

Dear Senator Brownlee:

I appreciate all you have done in support of Senate Bill 501. I was very pleased when the Bill passed the Senate by a vote of 38-2.

During the last four months we have been working with Kansas Department of Commerce and Housing and the Overland Park Chamber of Commerce to attract a California-based mortgage processing operation that strongly desired our Overland Park location.

Two weeks ago, the company informed us they were signing a lease for office space in Missouri, due to, of all things, state income tax policy. The difference they said was Missouri didn't tax income from out-of-state customers.

The state's loss is about 300 new jobs (if not more) at today's wages of \$45,000. The company's total capital investment was in the \$8 to \$10 million range. What's disheartening is the company executives told us they wanted to be in Overland Park. Conversations with the company said our business environment, workforce amenities, and corporate culture were clearly favored over other Missouri locations.

Dean Development Incorporated owns and manages one of Overland Park's largest office developments. Our complex consists of 17 buildings situated on 140 acres, 1.2 million square feet, and houses more than 150 tenants employing more than 3,809 individuals, with an additional 500,000-600,000 square feet of commercial office building space to develop.

On behalf of Dean Development Incorporated I ask that you continue your efforts for passage of Senate Bill 501. It will greatly enhance our efforts to attract similar firms in the future.

Sincerely,

Marshall H. Dean, Jr.

MHD:ea

✓ cc: Mary Birch
Overland Park Chamber of Commerce

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Attach. No. 3
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CERI QuickStat

A Weekly Update of Regional Economic Statistics

Country Economic Research Institute, Inc.
11111 W. 95th Street, Suite 210 Overland Park, Kansas 66214
Phone: (913) 599-1616 Fax: (913) 599-0423

Wednesday, April 3, 2002

RELOCATION OF WADDELL & REED WOULD RIPPLE THROUGH THE JOHNSON COUNTY AND KANSAS ECONOMIES

The transactions of the financial services firm Waddell & Reed are a significant part of Johnson County's "export base" bringing outside dollars into the local economy from across the nation. Because it is part of the export base, the impact of the relocation of the firm out of Kansas would ripple through all the other industries in Johnson County's economy. CERI used its economic impact model to estimate this "induced impact" on the other industries in Johnson County's economy. It was determined that in addition to the loss of the sales, payroll and jobs at Waddell & Reed, the Johnson County economy would suffer the additional loss of 642 jobs, annual sales of nearly \$36 million and annual household income of roughly \$12 million. The following table shows how each of the other industries in Johnson County's economy would be impacted.

Industry	Output (Sales)	Household Earnings	Jobs
Agricultural Services	\$99,952	\$58,306	4
Mining/Extraction	\$12,494	\$0	0
Construction	\$803,784	\$245,716	12
Manufacturing	\$3,477,512	\$741,314	32
Transportation	\$2,153,142	\$1,103,641	39
Communications	\$2,069,848	\$437,292	12
Utilities	\$537,244	\$95,788	3
Wholesale Trade	\$1,803,308	\$641,361	23
Retail Trade	\$3,856,498	\$1,720,015	130
Insurance	\$1,565,921	\$541,409	19
Real Estate	\$6,996,670	\$149,929	24
Lodging	\$595,550	\$229,058	23
Personal Services	\$598,500	\$270,705	26
Business/Professional Services	\$5,259,997	\$2,632,081	120
Eating/Drinking Places	\$2,365,541	\$787,125	83
Health Services	\$2,831,986	\$1,507,616	53
Miscellaneous Services	\$1,786,650	\$520,586	39
Total Induced Impact:	\$36,814,597	\$11,681,942	642

Source: CERI Inc. Economic Impact Model

STATE OF KANSAS

Bill Graves, Governor

DEPARTMENT OF REVENUE

Stephen S. Richards, Secretary

Office of the Secretary
Kansas Department of Revenue
915 SW Harrison St.
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Office of the Secretary

April 5, 2001

Representative Peggy Palmer
State Capitol Building, Room 431-N
Building Mail

Re: Meeting With Waddell & Reed Concerning House Bill 2061

Dear Representative Palmer:

On April 2, 2001, I met with John Sundeen, Jr. of Waddell & Reed, Kathy Damron, lobbyist, and Brian Hall of KPMG and members of my staff to discuss House Bill 2061 and the appropriateness of a K.S.A. 79-3288 petition for relief from the three-factor formula for apportionment of income. The grounds for relief under such a petition would be that the apportionment formula under current law does not fairly represent the extent of the taxpayer's business in the State.

Mr. Sundeen responded that the motivation behind Waddell & Reed's effort to obtain alternative income apportionment formula, as advanced in House Bill 2061, was to obtain an economic incentive for Waddell & Reed to remain in Kansas. He stated that he was not prepared to argue that the apportionment formula applicable to Waddell & Reed under current law was "unfair." His primary argument in support of the proposed legislation is that it would remove a competitive disadvantage Waddell & Reed now faces. In view of favorable tax legislation passed in other states where competing mutual fund service companies are located (such as Missouri and Massachusetts), modification of the tax apportionment formula provides a permanent incentive.

Because economic incentives are beyond the scope of the relief the Secretary may grant in a K.S.A. 79-3288 petition, it appears that little, if anything, would be accomplished by Waddell & Reed filing one. The decision as to whether Waddell & Reed should be given an economic incentive and the form of that incentive is clearly a legislative one.

Please let me know if you have any questions concerning the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen S. Richards", is written over a horizontal line.

Stephen S. Richards

cc: Lt. Governor Gary Sherrer

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Attach. No. 4
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DEVELOPMENT
AND RETENTION
COUNCIL

OF • NORTHEAST • JOHNSON • COUNTY

April 3, 2002

State of Kansas House Taxation Committee
State Capitol
Topeka, KS 66612

Re: SB 501

Dear Committee Members:

On behalf of nine cities of Northeast Johnson County, I want to urge your favorable consideration of SB 501. Your support of this bill will retain approximately 650 jobs in Kansas. In addition to the state income taxes and corporate taxes paid to Kansas, these employees contribute significant sales to many of the smaller cities surrounding the offices of Waddell & Reed's corporate offices (especially Mission, Merriam, Roeland Park and Fairway).

I know you will be presented specific figures on the amount lost to our area's economy. However, allow me to add that the loss of this corporate giant and the relocation of their residents over time to Missouri or elsewhere will have a detrimental impact on our area. Despite the strong growth in other parts of Johnson County, our area has been losing population (and students) over the past several decades. Waddell & Reed is the largest private employer in our area. Your support can save this important company in Kansas.

Thank you for considering this matter.

Very truly yours,



Richard Caplan
Executive Director

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Attach. No. 5
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Re SB 575

Session of 2002

HOUSE BILL No. 3030

By Committee on Taxation

3-21

9 AN ACT relating to taxation of income; amending the definition of res-
10 ident trust; amending K.S.A. 79-32,109 and repealing the existing
11 section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 79-32,109 is hereby amended to read as follows:
15 79-32,109. As used in this act, unless the context otherwise requires:

16 (a) Any term used in this act shall have the same meaning as when
17 used in a comparable context in the federal internal revenue code. Any
18 reference in this act to the "federal internal revenue code" shall mean
19 the provisions of the federal internal revenue code of 1986, and amend-
20 ments thereto, and other provisions of the laws of the United States re-
21 lating to federal income taxes, as the same may be or become effective
22 at any time, or from time to time, for the taxable year.

23 (b) "Resident individual" means a natural person who is domiciled in
24 this state. A natural person who spends in the aggregate more than six
25 months of the taxable year within this state shall be presumed to be a
26 resident for purposes of this act in absence of proof to the contrary. A
27 nonresident individual means an individual other than a resident
28 individual.

29 (c) "Resident estate" means the estate of a deceased person whose
30 domicile was in this state at the time of such person's death. "Nonresident
31 estate" means an estate other than a resident estate.

32 (d) "Resident trust" means a trust which is administered in this state.
33 ~~A trust shall not be deemed to be administered in this state solely because~~
34 ~~it is subject to the jurisdiction of a district court within this state: (1) A~~
35 ~~trust created by will of a decedent who at the time of death was domiciled~~
36 ~~in this state; (2) a trust created by, or consisting of property of, a person~~
37 ~~domiciled in this state on the date the trust or portion of the trust became~~
38 ~~irrevocable." "Nonresident trust" means a trust other than a resident trust.~~

39 (e) "Resident partner" means a partner who is a resident individual,
40 a resident estate, or a resident trust. "Nonresident partner" means a part-
41 ner other than a resident partner.

42 (f) "Resident beneficiary" means a beneficiary of an estate or trust

(3) a trust administered in this state; (4) a trust any of the property of which is located in this state; or (5) a trust any one of the beneficiaries of which is domiciled in this state

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