

Approved Tuesday, February 6, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by SENATOR DAN THIESSEN at
Chairperson

11:00 a.m./p.m. on Wednesday, January 31, 1990 in room 519-S of the Capitol.

All members were present except:
Senator Don Montgomery

Committee staff present:

Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Carol Smith, Co-owner of Midwest Machine Works
Mark Burghart, Department of Revenue

Chairman Thiessen called the meeting to order at 11:08 a.m. and told the members they have the minutes of January 23, 24 and 25th, 1990 in front of them, which they had for a few days and he asked for a motion.

Senator Oleen moved to approve the minutes of January 23, 24 and 25, 1990, 2nd by Senator Martin. The motion carried.

The Chairman said we had SB501 on our agenda but he said at the request of the sponsor of the bill, we will not be hearing SB501 today. The Chairman said the bill will be sent back to Senate Federal and State Affairs Committee, and he turned attention to SB414

SB414:AN ACT relating to sales taxation; exempting sales of materials and services associated with the modification of certain equipment; amending K.S.A. 79-3606 and repealing the exsiting section.

Chairman Thiessen recognized Carol Smith, Co-owner of Midwest Machine Works.

Carol Smith said she, realizes that this is not a good year to ask Kansas for another sales tax exemption.

She said, her firm specializes in repair of giant extruding machines for the rubber and plastics industry and is one of 3 in the nation and one of only five in the world in that market. 60% of Midwest Machine Works is owned by Werner and Pfleiderer, a West German firm that is a subsidiary of Krupp, an international business giant.

She said, Midwest was audited last year and told that it should be collecting sales tax on labor and materials involved in the repair of rubber and plastics extruders. The bill reaching back three years and including penalty and interest, is more than \$300,000. She said, her company's two competitors in the United Sates aren't required by their state laws to collect sales tax on repairs. Kansas law requires that sales tax be collected on repair of machinery and equipment but not on remanufacture of machinery and equipment. (ATTACHMENT 1)

Ms. Smith said each one of their customers provided them with an exemption certificate claiming their state did not impose a sales tax on manufacturing equipment, or at least the labor portion of it, or all taxes would be paid within their state. Negotiations with the Department of Revenue have been ongoing for the past year, but the department feels K.S.A. 79-3603 (q) which imposes a sales tax on the service of repairing, altering or maintaining tangible personal property requires them to collect sales tax on their remanufacturing or rebuilding services. She said, because of the financial impact of this assessment on their company and the competitive nature of the business they are in, she came before the committee today asking for relief.

Chairman Thiessen asked Ms. Smith if she had any documents from the audits you had about them saying you should be collecting sales tax and the date when this all happened?

Ms Smith said she was sorry, she did not have that information with her, but she would get it for the committee, and she said it was at least 10 years ago, and that there never was a statement.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519-S Statehouse, at 11:00 a.m. ~~xxx~~ on Wednesday, January 31, 19 90

Senator Martin asked Ms. Smith if when they went through the appeals process with this sales tax audit, that you have stated you owe, do you have this on file with the Director, and how far back does this go back for assessment, and what does your attorney say, they are right, and you are wrong.

Ms Smith said their attorney says they have a very strong uphill battle, because of the way the law is stated, that to go through this with the taxation department probably they would not able to win, as it stands now, because of the way the law is stated. The Department of Taxation hasn't been totally unruling, but they are not open for much communication on this, because of the way the law is written and the way it is stated. They are firm, and policy has indicated, if we don't like it, we had better see if we can get the law changed.

Mark Burghart of the Department of Revenue said Midwest is in the repair business because it sends back to the customers the same piece of machinery that is sent in for repair. He said if Midwest maintained an inventory and sent repaired extruders out to replace the ones sent in by customers, the firm would be exempt from collecting sales tax.

Ms. Smith said the sales tax would put her company at a competitive disadvantage and would threaten expansion plans. The North Topeka company now employs 75 people full time and 25 part time. It is considering expansion to 108 full-time workers and 25 part-time workers in the next 3 years.

She said, rubber and plastics manufacturers would shy away from the Topeka plant for repairs when sales taxes would add \$15,000 tp \$30,000 to the repair bills. She said, Midwest is not collecting sales taxes now from customers but has created in its accounting system, an allowance for sales taxes. She said Midwest has not yet paid the back sales taxes to the state but instead was told by revenue officials that if Midwest wanted to try to get the sales tax exemption through the Legislature, it should give it a shot this year.

Chairman Thiessen said he wanted to know more about Midwest's tax situation compared with its competitors. He said, we have made some property tax changes that should have helped you, exempting inventories.

Senator Francisco told Ms. Smith that it bothered him that her Company had not paid the sales tax, under protest if necessary.

Chairman Thiessen asked if their competitors had an inventory tax, and Ms. Smith said she did not know if they did or not.

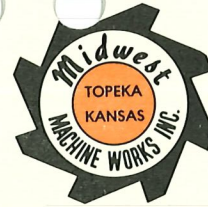
After committee discussion Chairman Thiessen adjourned the meeting at 11:52 a.m.

FORMERLY:

Midwest

MACHINE WORKS, INC.

P.O. Box 8250 Topeka, Kansas 66608-0220 Phone (913) 235-2336



Maintenance
Consulting
Services
Division

(216) 864-7666
Suite 116
3090 W. Market Street
Akron, Ohio 44313

CURRENTLY: MIDWEST-WERNER & PFLEIDERER, INC.

WRITTEN TESTIMONY

PRESENTED BY CAROL J. SMITH

SENATE BILL 414

Mr. Chairman, members of the Senate Assessment and Taxation Committee, my name is Carol Smith, and I want to thank you for allowing me to appear this morning to testify in support of Senate Bill 414, as introduced by Senator Burke.

I am Executive Vice-President of Midwest-Werner & Pfleiderer, a company located here in Topeka, Kansas. We started this business 30 years ago in Topeka and until November 1989 it was known as Midwest Machine Works, Inc.

What we do is rebuild and manufacture new, large internal mixers and extruders used in the rubber industry, worldwide. We are very unique in what we do because of the great amount of engineering technology and metallurgical study needed to do this type of work.

We only have two competitors in the United States, and approximately five in the entire world. The expertise we have acquired in our engineering and our production takes years to establish. Even though we don't have many competitors, it is extremely stiff competition.

For your general information, let me define the words "Internal Mixer" and "Extruder" as I relate to them within the rubber industry.

INTERNAL MIXER: Sometimes known as the "Banbury" mixer, Banbury being a copywrited term, it is the nucleus of the rubber industry production line. It is where all of the natural and synthetic rubber and rubber compounds are mixed together by two rotors turning inside the mixer body very much like the kitchen appliance mixer with beaters, only in a much larger arrangement.

The common sizes used in these mixers weigh anywhere between 45,000 pounds to 85,000 pounds. They are large and are massive.

EXTRUDER: As related to the rubber industry, it is a large machine that usually sets under the mixer, so when the batch of rubber from the mixer is released or dropped to go through the assembly line, it is normally dropped into an extruder. That, in a sense, is one last stage of the mixing. At the same time it extrudes or moves the rubber on into other areas of the assembly line.

The normal size of an extruder used under a mixer is typically around 18" in diameter and is approximately 15 feet long.

The origin of Senate Bill 414 stems from a sales tax notice of assessment dated January 9, 1989 from the Kansas Department of Revenue for the period April 1, 1986 through September 30, 1988. The amount, including penalty and interest, is in excess of \$300,000.

The assessment came as a complete surprise to our company because we had one through an audit some years ago and were not told we were to collect sales tax on rebuilding services.

Secondly, each one of our customers provided us with an exemption certificate claiming their state did not impose a sales tax on manufacturing equipment, or at least the labor portion of it, or all taxes would be paid within their state. Negotiations with the Department of Revenue have been ongoing for the past year, but the department feels K.S.A. 79-3603(q) which imposes a sales tax on the service of repairing, altering or maintaining tangible personal property requires us to collect sales tax on our remanufacturing or rebuilding services. Because of the financial impact of this assessment on our company and the competitive nature of the business we are in, I have come before you today asking for relief.

We realize this is not a good year to ask the Kansas Legislature to pass another sales tax exemption. There are tough decisions ahead which you will be asked to make concerning property tax relief.

There have been suggestions made to remove some sales tax exemptions so as to provide a source of revenue to fund property tax relief. Senate Bill 414 does create a new sales tax exemption, however, because the legislation is aimed at a very specific industry, the department of revenue fiscal note indicates the passage of this bill would have a minimal impact on the state general fund. It is our total belief and commitment that the passage of Senate Bill 414 will in fact generate revenue for the State of Kansas.

Midwest Machine Works, Inc., our company, was purchased in November of 1989 by a West German industrial leader, Werner & Pfleiderer. Werner & Pfleiderer is owned by the West German industry of Krupp, which is listed as one of the top seven largest corporations in the world.

The acquisition was a 60% purchase of which 40% is still owned by Leonard Smith and myself. The corporation's management was not changed and is dedicated to expanding and adding to what we already have.

Presently, we employ seventy full time people and twenty-five part time workers in the field engineering division. Our company has projected within three years to have 108 full time people with approximately twenty-five part time workers and physically expanding our facility by 18,000 square feet.

This company was started in Kansas and the intent is for it to continue to grow in Kansas, but because of the intense pricing competition between us and our other two competitors in the United States, we need the relief afforded by Senate Bill 414 in order to expand in Kansas.

Both of our competitors are located in states that do not impose a sales tax on labor services. This puts us at a totally competitive disadvantage. Our customers go out of their way now to come to Kansas in order to acquire the quality of workmanship they desire. It is not extremely easy to get a piece of equipment that weighs anywhere from 30 to 40 ton into the state of Kansas.

If we throw up more barriers, such as charging sales tax on a \$300,000 to \$500,000 rebuilding job, that is labor intensive, our customers will go elsewhere.

Quite frankly, if we don't get this relief, we will be forced to look elsewhere also for our expansions. The potential for growth in an industry that can provide new jobs, increased income taxes and property tax, will not only benefit Topeka, but will also benefit the State of Kansas, which is continuously suffering because of its lack of diversified industries to broaden the tax base.

I would respectfully request your support of Senate Bill 414 for passage. I will be happy to answer any questions you may have about our company, or the bill.

Thank You.