

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson John Edmonds at 9:00 a.m. on March 7, 2003 in Room 519-S of the Capitol.

All members were present except:

Rep. Vaughn Flora
Rep. Tom Sawyer
Rep. Scott Schwab
Rep. Bonnie Sharp

Committee staff present:

Chris Courtwright, Legislative Research Dept.
April Holman, Legislative Research Dept.
Gordon Self, Office of the Revisor of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Ron Hein, Kansas Restaurant and Hospitality Assn
Mark Beshears, Kansas Chamber of Commerce and Industry/Spring
Martha Neu Smith, Kansas Manufactured Housing
Tim Etzel, President of JETZ Service Co. Inc.
TC Anderson, Executive Director, Kansas Society of Certified Public Accountants
Terry Kimes, CPA with Mize-Houser
Neal Sharma, Chief Executive Officer of Digital Evolution Group

Others attending:

See attached list

Chairman Edmonds opened the meeting with acceptance of bill introductions. Ron Hein addressed the committee requesting the introduction of a bill on behalf of Kansas Cooperative, an adhoc coalition for some cooperative housing projects for the State of Kansas. HUD is making some changes in that program and is attempting to get people to go out and get private financing rather than HUB subsidized financing and having the government involved in the subsidization of the financing. In order for these entities to retain their property tax exemption, changes will have to be made in the statutes. They are requesting a bill that would allow these changes to be made

With no objection, Chairman Edmonds accepted that bill for introduction.

Representative Huntington requested the introduction of a bill for periodic tax review.

Hearing no objections, Chairman Edmonds accepted that for introduction.

The Chairman asked for a motion to adopt the minutes of the meetings from 2/14, 2/19, 2/20, 2/21, and 2/25. Representative Larkin made a motion to accept the minutes as read. Representative Owens seconded the motion. Motion passed. Minutes adopted.

With no further bill introductions, the Chairman opened the floor for hearings on **HB 2323**.

First to appear before the committee in opposition to **HB 2323** was Ron Hein of the Kansas Restaurant and Hospitality Association. It is their feeling that elimination of this sales tax exemption for food provided free of charge to employees would create numerous interpretation questions and cause a tremendous administrative burden on restaurants. (Attachment 1)

Next to testify in opposition to **HB 2323** was Mark Beshears, Assistant Vice President of State and Local Tax for Sprint Corporation and Director of the Kansas Chamber of Commerce and Industry. He stated that removal of the exemption would send a negative signal to businesses. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 7, 2003 in Room 519-S of the Capitol.

Martha Neu Smith, Executive Director of Kansas Manufactured Housing Association, testified in opposition to **HB 2323**. In her testimony she stated that without the exemption, manufactured housing would pay sales tax on it's rental agreement while all other forms of rental agreements for housing would be tax exempt. (Attachment 3)

Testifying on behalf of the JETZ Service Company, Inc. Was Timothy N. Etzel, President stating that they install, service, maintain, and collect coin receipts from washers and dryers that are primarily placed in apartment communities. The tax on coin-operated laundry receipts affect primarily the low income, the poor, the students and the elderly. (Attachment 4) Mr. Etzel also included various letters to the Governor as well as from other groups in his testimony. (Attachment 5)

Robert Meuschke, President of the Missouri-Kansas Coin Laundry Association. Mr. Meuschke states that if th exemption is removed it will apply a tax to an already heavily taxed business, it will affect the owners as well as the citizens of Kansas. (Attachment 6)

With no further conferees on **HB 2323**, Chairman Edmonds closed the hearing on the bill and opened the hearing on **HB 2322**.

T.C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants as a proponent to **HB 2322** asking that the legislature consider restoration of the sales tax exemption for custom software design. (Attachment 7) Also included with his testimony, was a copy of a magazine article entitled *Tax Collectors Eye Custom Software* (Attachment 8) as well as a Sales Taxation of Services - 1996 Update. (Attachment 9)

Appearing also as a proponent of **HB 2322** was Terry Kimes, CPA, CITP, President of Mize-Houser & Company. He stated that he believes that the services for developing custom code are professional services and therefore the taxing of these services should be repealed and added to the review of taxing other professional services. Taxing these services is harmful to small and medium size businesses in Kansas. (Attachment 10) Also included with his testimony was a **NOTICE** regarding Kansas Retailers' Sales Tax with a brief description. (Attachment 11)

Assistant Vice-President of State and Local Tax for Sprint, Mark Breshears, whose testimony as a proponent for **HB 2322** indicated that the removal of the exemption in 2002 is expected to cost Sprint's long distance division approximately \$18 million. (Attachment 12)

CEO of Digital Evolution, Neal Sharma, testified favor of **HB 2322** because a sales tax on technology professional services unfairly and arbitrarily targets a single industry, puts firms like theirs at a competitive disadvantage versus those in Missouri and other states, stunts a young and burgeoning segment of our economy and shifts the tax burden to smaller companies who need custom software development in order to compete in today's economy. (Attachment 13)

Submitted in opposition to **HB 2322** was written testimony from ARC (Affordable Residential Communities) (Attachment 14); C.D. Chance, manager of Chisholm Creek MHC (Attachment 15); and Coin Laundry Association (Attachment 16)

With no other person wishing to address the bill, Chairman Edmonds closed the hearing on **HB 2322**.

There was no further business before the committee and the meeting adjourned at 10:20 a.m.

GUEST LIST

DATE March 7, 2003

| NAME | REPRESENTING |
|---------------------|--------------------------------|
| Diane Gruver | KS Corp Council |
| George Petersen | ITN |
| TIM ETZEL | JETZ SERV. Co. |
| MARK SCHREIBER | Western Energy |
| DAVE SCHNEUBIS | " " |
| Michelle Peterson | K. Governmental Consulting |
| TERRY Rimes | Mize, Havel & Company |
| Mike Murray | Sprint |
| Mark Beckers | Sprint |
| ST. Little | Little Forest Relating |
| J.P. Small | KOCH INDUSTRIES |
| Marsha Sue Small | KMKHA |
| Ron Hen | Hein Law Firm, Chd |
| Charlee Carpenter | RSCC |
| Kevin Brown | Hein Law Firm |
| Hinda Jones-Gittner | Apt Council of Topeka |
| Leslie Kaufman | KFB |
| Charles Fredman | APT ASSOC. OF WICHITA |
| Eric Gausee | BOEING |
| ED JASKINTA | THE ASSOCIATED LANDLORDS OF KS |
| Rebecca Esch | Federica Consulting |

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Ronald R. Hein

Attorney-at-Law

Email: rhein@hwchtd.com

**Testimony Re: HB 2323
House Taxation Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
March 7, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

The KRHA opposes HB 2323 which removes the exemption from sales tax of meals served free to employees of restaurants, hotels, or other businesses in the state where meals or drinks are regularly sold to the public.

Restaurants provide meals to employees as an accommodation, given the fact that the employees are expected to work during the traditional meal times (breakfast, lunch, and dinner). That is when restaurants are busy, and employees are generally not permitted to take their breaks during the peak business times. Therefore, where most employees would be given an opportunity to take a break, restaurant employees are expected to work. As a result, when the rush period ends, and employees are permitted to take a break, they are permitted to eat on the premises prior to continuing their work.

This exemption has been on the books since 1965. It is doubtful that sales taxes were ever collected on such free meals. It is likely that this exemption was added simply to clarify that the sales tax act was not to be applicable to these types of transactions.

Elimination of this sales tax exemption for food provided free of charge to employees would numerous interpretation questions and cause a tremendous administrative burden on restaurants.

The first question would be, what is the value of the meal being given? If the meals are provided for free, even if they are not exempt from tax, the sales tax should be the rate of the tax times the amount paid for the meal, which would be zero. Restaurant employees do not necessarily eat a meal which is on the menu. They might get a combination of food from the kitchen; the amounts or combination of the foods might be different than any menu items; the meals might even contain "mistakes". (By mistakes, I refer to such things as a salad with the wrong dressing, or a food item which the customer didn't want,

House Taxation
Attachment 1
Date 3-7-03

which have been prepared but which either would not or could not be sold to the public.) If there are an excessive number of items left over which cannot be reused, or stored, employees might consume items that would otherwise be thrown out.

How would the restaurant value these types of meals? Would the restaurant value the "market" price of the served meal, or just the value of the food that is consumed without service? Should the meal be discounted if it is not served with the same presentation that the restaurant might serve? Should the value or discount be different depending upon whether or not it is a restaurant which serves, or simply sells at the counter? Should the employee then pay the sales tax on the otherwise free food? If the employee refuses to pay the tax, and the employer indicates that the food will just be thrown away, is the value of the food then zero, and the employee may still have the meal but does not have to pay the tax? If the employee indicates that they don't have time to eat and will just "grab a roll" or something on the way out the door, does the item have to be valued and the sales tax collected from the employee?

How does the restaurant track the revenue taken in from the employees to pay the tax? Normally, the restaurant would collect the tax from the consumers, and would keep a record of total sales volume for the month (or period of time required for reporting purposes), and then calculate the tax based upon the gross sales. Specific sales tax amounts received are not itemized and held in a special fund or cash drawer. So where would the employer put the employees tax money?

How would it be accounted for? It cannot be included within the gross sales. So the money could not be co-mingled with the other day's receipts, and would have to be separately maintained by the restaurant. Then, how would that money be remitted to the state? There wouldn't be a "gross sale" on the restaurant's books for that month, because the meal or food was given for free. Or will the restaurant have to maintain a second set of books, one reflecting gross sales for items sold for cash, and another reflecting sales that includes the imputed cost of the food given to the employees for free?

Attempt to answer any of these questions leads to the conclusion by the legislature reached back in 1965 that added this sales tax exemption.

With rising food costs, many restaurants are moving towards employee's discount for a meal rather than free meals. This way, sales tax is paid on the final cost of the food. (E.g., A meal costing \$10 with an employee discount of 50% results in sales paid on \$5.

We respectfully request this committee to reject HB 2323, or at least the portion thereof that deletes the exemption set out in K.S.A. 79-3606j. Thank you very much for permitting me to testify, and I will be happy to yield to questions.

MEMORANDUM

TO: The Honorable John Edmonds, Chairperson
House Committee on Assessment and Taxation

FROM: Mark Beshears, Assistant Vice President
State and Local Tax for Sprint

DATE: March 7, 2003

RE: House Bill 2323

I am Mark Beshears, Vice President of State and Local Tax for Sprint Corporation located in Overland Park, Kansas. I am appearing today in my dual capacity as a tax officer for Sprint and as a Director of the Kansas Chamber of Commerce in Industry. I am pleased to be here to provide input and to speak in opposition to House Bill No. 2323. The bill would repeal the current sales tax exemption for isolated and occasional sales. This particular exemption has been in place for many years in the Kansas Retailers' Sales Tax Act. The provision eliminates the reporting and payment requirements for transactions that are non-recurring and are typically made by individuals who are not retailers customarily involved in making retail sales. This particular provision also is very important for businesses that have assets located in the State of Kansas.

In today's business environment, corporate reorganizations and liquidations are common place. These business restructurings are done in part to make businesses operate more efficiently and be more competitive in the ever-changing market place. Kansas historically has been very supportive of efforts to assist business development. For example, the Judiciary Committees are currently considering legislation that would conform our Kansas corporation code to the Delaware Code. This hopefully will make Kansas laws more progressive and better attuned to the existing business environment. The isolated and occasional sales tax exemption is critical to future business development within the state. The exemption allows businesses to be involved in corporate restructuring without severe negative state tax consequences.

Removal of the exemption would once again send a negative signal to businesses. A business would be reluctant to locate assets within the state if it knew that as part of a restructuring effort, a potential significant sales tax liability would accrue simply as a result of restructuring efforts. On behalf of Sprint and the Kansas Chamber, I strongly urge the House Committee to retain the isolated and occasional sale exemption. I would be happy to respond to any questions that you might have.

House Taxation
Attachment 2
Date 3-7-03



214 SW 6th St., Suite 206
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TESTIMONY BEFORE THE HOUSE COMMITTEE ON TAXATION

TO: Representative John Edmonds, Chairman
And Members of the Committee on Taxation

FROM: Martha Neu Smith, Executive Director

DATE: March 7, 2003

RE: HB 2323 – Eliminating Sales Tax Exemption on Leases of
Tangible Personal Property

Chairman Edmonds and Members of the Committee, my name is Martha Neu Smith and I am the executive director of Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association representing all facets of the manufactured housing industry (manufacturers, retailers, community owners/operators, finance and insurance companies, suppliers and transporters).

Thank you for the opportunity to comment on House Bill 2323.

KMHA opposes the provision of House Bill 2323 that repeals the sales tax exemption on leases of tangible personal property used as a dwelling for 28 consecutive days. This exemption currently allows personal property manufactured homes to be leased without sales tax being assessed on the rental agreement. Currently, sales tax does not apply to the lease or rental agreement for apartments, condominiums, duplexes, town homes or single-family homes that are rented.

Despite the fact that most homes in manufactured home communities (mobile home parks) are owner occupied, there are a few that are leased. I do have one member that has developed a new program where families can rent a manufactured home for one year and if their payments are on time during that one-year period, they have the option to purchase the home. The one years rental payments are considered their down payment. Most of the families that consider this program are either first time homebuyers or families that have had some financial setbacks and can't afford the standard down payment required for most home purchases. This program would be negatively impacted by the re-instatement of sales tax on leases for personal property dwellings.

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Attachment 3
Date 3-7-03

The major thrust behind the passage of this sales tax exemption was based on equity between all rental housing, however, the Kansas Legislature also recognized that manufactured housing provides quality affordable housing.

In closing I would ask that you consider that without this exemption, manufactured housing will pay sales tax on it's rental agreement while all other forms of rental agreements for housing will be tax exempt. I would respectfully request that you oppose the passage of HB 2323.

Again, thank you for your consideration.



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E-mail: jetz@cjnetworks.com
Jetz Online: www.jetzservice.com

Professional Laundry Systems

March 7, 2003

To: House Taxation Committee

Re: Review of Sales Tax Entities (Exempt)

This letter is in response to House Bill No. 2323 (Committee on Taxation)

I have appeared before the House Taxation Committee several times over the past 30 plus years, concerning the issue of a proposed sales tax on coin-operated laundry receipts. I would like to point out the following reasons why this tax is both unjust and uncollectible:

1. It is the most regressive tax that you could possibly impose. (See schedule). It primarily affects the low income, the poor, the students and the elderly.
2. In order to collect the 5.3% our industry will have to raise prices by a \$.25 increase on a \$1.00 cycle. (25% increase to collect 5.3%)
3. Washing clothes, (cleanliness) is a necessity not a luxury. To tax cleanliness in a regressive manner is simply not right.
4. There are approximately 425,000 Kansas citizens that live in multi-family facilities, student housing, senior citizen housing, etc., that utilize coin-operated laundry equipment (see attachment). If this regressive tax is passed on to these residents at a 25% increase, how is that to be explained?
5. The proposed tax, in essence, is not a sales tax but a gross receipts or earnings tax as it can not be passed on the consumer.
6. The argument has been made that we are the last coin-operated industry not being taxed for sales. I have not heard whether it is right or wrong, collectable or uncollectible, just that we are the last. I am not arguing the case for product vendors, however they do have control over the size of their products, as an example, four sticks of gum instead of five, smaller roll of life savers, smaller candy bar and so on. For our service can we stop our machine in the middle of the final spin and accomplish the same thing? Obviously no!
7. Jetz Service Co., Inc. presently is located in eleven (11) states. Not one of these states has a sales tax on coin-operated laundry receipts. Obviously they have had to deal with the same issue your dealing with and found this tax to be unwarranted.

-1-

House Taxation
Attachment 4
Date 3-7-03

Colorado Springs
(719) 636-3928

Des Moines
(515) 224-9754

Kansas City
(816) 454-WASH (9274)

Omaha
(402) 339-2565

St.
(314) 385

8. Jetz Service Co., Inc. has approximately nine thousand five hundred (9,500) washers and dryers located at various multi-family communities in the state of Kansas. We can only practically increase the price for using our equipment a minimum of \$.25. This charge would cost \$50.00 per machine. That translates to a \$475,000.00 cost for our company to increase the price on these machines.

I feel that in order to better understand the service our company provides, it would be beneficial to give you a brief summary of our service. Jetz Service Co., Inc. is referred to in the trade as a coin operated laundry route. We install, service, maintain, and collect coin receipts from washers and dryers that are primarily placed in apartment communities. The laundry rooms are not attended, therefore it is impossible for us to collect sales tax from the customer. I believe that the honor system involving a container would probably not be appropriate either. We enter into long term lease agreements where we have rights as any tenant would have according to laws of the individual states. Our leases do not generally provide for any withholding from gross receipts other than what the terms of the contract might imply. This means that a tax that cannot practically be passed on would penalize either Jetz Service Co., Inc. or the owner of the property. In the event that the prices would increase to provide additional revenues for the tax then the low to middle income populous would be affected.

It is not difficult for me to understand why businesses in Kansas have become frustrated about doing business in this state. I believe that our company does its fair share in supporting the state and in paying its share of fair taxes. Legislators, this is not a fair tax and no matter how it is analyzed it is not going to come out a fair tax.

In closing, I hope that you will be tolerant of my obvious frustration and hopefully my comments will be helpful to you in making an objective decision. Thank you very much for your time.

Sincerely yours,

JETZ SERVICE CO., INC.



Timothy N. Etzel
President

TNE:kks

Enc.

Regressivity Index by Item

Spending by the Rich as a Share of Income
Compared to Spending by the Poor as a Share of Income*

| | Rich/ Poor | % of Total Per.Inc. | % Now Taxed | | Rich/ Poor | % of Total Per.Inc. | % Now Taxed |
|---|---------------|---------------------------|----------------|---|---------------|---------------------------|----------------|
| REGRESSIVE: | | | | | | | |
| * Coin-op. laundry/dry clean. | 0% | 0.1% | 20% | Personal care products | 24% | 0.8% | 98% |
| Coin-op laundry/dry clean. (nc) | 0% | 0.0% | 19% | Televisions, radios, stereos. | 25% | 1.0% | 98% |
| Other home fuels | 1% | 0.1% | 47% | Towing charges | 26% | 0.0% | 26% |
| Cigarettes | 1% | 1.1% | 86% | Beer & ale (away). | 31% | 0.2% | 99% |
| Clothing material | 1% | 0.1% | 84% | Personal care services | 35% | 1.1% | 11% |
| Motor oil | 1% | 0.0% | 98% | Wine (away) | 39% | 0.1% | 99% |
| Minor vehicle maint. on trips. | 1% | 0.0% | 40% | Spirits (away). | 42% | 0.4% | 99% |
| Appliance rental | 1% | 0.0% | 98% | Veterinary expenses. | 42% | 0.1% | 1% |
| Service policies | 1% | 0.0% | 16% | Clothing rental | 44% | 0.0% | 78% |
| Motorcycles | 1% | 0.1% | 94% | Clothing & shoes | 46% | 4.7% | 84% |
| Funerals | 1% | 0.1% | 35% | Housefurnishings and equip.. . . . | 47% | 4.6% | 98% |
| Septic tank cleaning. | 1% | 0.0% | 9% | Stationery, giftwraps. | 59% | 0.2% | 98% |
| Campers | 3% | 0.1% | 94% | Pets, food, supplies | 59% | 0.1% | 98% |
| Used cars & trucks | 3% | 2.1% | 94% | Misc. home services | 62% | 0.1% | 8% |
| Gasoline | 4% | 3.2% | 37% | College books & supplies | 70% | 0.1% | 54% |
| School lunches | 4% | 0.3% | 1% | Dry clean./laundry. | 73% | 0.2% | 32% |
| Home impr./maint. goods | 5% | 0.7% | 98% | Photographic equipment. | 76% | 0.1% | 98% |
| Carbonated drinks | 5% | 0.5% | 81% | Tool rental | 77% | 0.0% | 73% |
| * Food less candy & soft drinks | 5% | 9.3% | 22% | Furniture repair. | 81% | 0.1% | 72% |
| Campers (trailers,attachable). | 5% | 0.1% | 98% | Admiss. to movies, plays, etc.. | 97% | 0.3% | 45% |
| Moving & storage. | 5% | 0.1% | 1% | Fresh flowers and house plants. | 98% | 0.2% | 98% |
| Cable fees | 5% | 0.4% | 14% | Accessories. | 99% | 0.2% | 97% |
| Electricity | 6% | 2.1% | 56% | Total/Average (Regressive): | | 49.0% | 65% |
| Prescription drugs. | 6% | 0.4% | 1% | | | | |
| Natural gas. | 6% | 0.9% | 56% | PROGRESSIVE: | | | |
| Tires, batteries & access.. . . . | 7% | 0.7% | 98% | Legal fees | 100% | 0.4% | 6% |
| Water/sewer | 7% | 0.5% | 10% | Fees for participant sports | 104% | 0.3% | 41% |
| TV, etc. repair & rental | 8% | 0.1% | 73% | Sports, hunting, etc. equip.. . . . | 122% | 0.3% | 98% |
| Newspapers | 8% | 0.2% | 15% | Laundry/dry clean. sent out (nc) | 140% | 0.0% | 31% |
| Telephone | 8% | 1.3% | 68% | Spirits (home) | 140% | 0.4% | 97% |
| Other school books & supp. | 9% | 0.0% | 35% | Admissions to sporting events | 156% | 0.1% | 52% |
| Water softening serv. | 10% | 0.0% | 38% | Home impr./maint. services | 161% | 1.5% | 23% |
| Cigars, other tobacco | 10% | 0.1% | 98% | Watch & jewelry repair | 169% | 0.0% | 49% |
| Soaps, clean., paper, misc. ho. prod. | 10% | 0.8% | 92% | New cars & trucks | 218% | 4.2% | 94% |
| Fuel oil | 11% | 0.3% | 53% | Fees for recre. lessons. | 220% | 0.3% | 6% |
| Mowing equipment, etc. | 11% | 0.1% | 98% | Boats & boat motors | 238% | 0.2% | 98% |
| OTC drugs, dressings, med. equip. | 11% | 0.3% | 68% | Parking fees | 245% | 0.1% | 37% |
| Eyeglasses | 11% | 0.1% | 15% | Car, truck & other rental | 251% | 0.1% | 94% |
| Trash/garbage collection. | 13% | 0.1% | 9% | Jewelry & watches | 259% | 0.6% | 98% |
| Candy & chewing gum. | 13% | 0.2% | 62% | Accounting fees. | 296% | 0.1% | 6% |
| Beer and ale (home) | 15% | 0.8% | 96% | Apparel/accessory alter. | 310% | 0.0% | 31% |
| Magazines or periodicals. | 17% | 0.1% | 42% | Wine (home). | 324% | 0.2% | 96% |
| Toys, hobbies, bikes, etc.. | 17% | 0.5% | 98% | Lawn & garden supplies. | 334% | 0.1% | 98% |
| Purchase of film | 18% | 0.1% | 98% | Club membership dues & fees | 370% | 0.2% | 27% |
| Books | 19% | 0.2% | 98% | Lodging while out of town. | 613% | 0.6% | 90% |
| Meals away except at school | 20% | 4.7% | 98% | Gardening/lawn care | 1336% | 0.1% | 23% |
| Car repairs | 21% | 1.4% | 63% | Landing & docking fees | 3119% | 0.1% | 13% |
| Shoe repair. | 22% | 0.0% | 42% | Total/Average (Progressive): | | 9.9% | 71% |
| Developing of film | 23% | 0.1% | 54% | | | | |

*Column one (Rich/Poor) compares the share of income spent by the rich (the top 0.7%) on each category to the share of income spent by the poor (quintile I). Column two reflects the percent of total personal income spent on each item by all families. Column three shows how much of total spending on each item is currently subject to state sales tax.

(from articles - Dem - Jan 1988 - Excerpts from "Hold up on the 50c tax" - March 1988 - inclusion in "The State of the Union" - 4-3)

COMMERCIAL MANAGEMENT INC.
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BELOIT OFFICE
BELOIT, KS. 67420

E-MAIL: jan@kans.com
Tele: & Fax 785-738-4168

March 25, 2002

Office of the Governor
State Capital
Topeka, Kansas 66612-1590
Attn: Bill Graves;

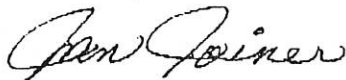
Dear Governor Graves;

We as a management company of low income apartments, are quite concerned about the proposed tax-relief program, as it affects the renters of Kansas and the coin-operated washer and dryer vendors, that provide this service to our tenants.

Laundry is a necessity for personal hygiene, and public health for our residents, many of whom, are disabled, elderly, and young children of single parents, who are struggling to make ends meet. Some of these, would be forced to make a choice between clean clothes to wear to work, or school or eating. Citizens of our great State of Kansas should not be put in positions that they have to make that choice. Those who are working, would lose their jobs if they were not dressed in clean clothes, so that would mean they would go hungry.

I firmly believe that there are other ways of providing necessary funding that would not punish the elderly, handicapped or disabled, and low income citizens of Kansas.

Sincerely;



Jan Joiner
C. M. I. Operations Director

House Taxation
Attachment 5
Date 3-7-03

March 15, 2002

Office of the Governor
State Capital
Topeka, Kansas 66612-1590
Attn: Bill Graves

Dear Governor Graves;

I am writing this letter, concerned about the proposed tax-relief program, as it affects the renters of Kansas and to coin-operated washer and dryer vendors.

I am the President of the Apartment Association of Greater Wichita and have been asked to write this letter, representing an estimated 77 apartment communities and 27 owners/property management companies.

Our primary concern about the proposed sales tax is that the tax would be passed directly to the residents of our communities. No matter what the increase of the tax, the machines would have to be increased by 25% (since the machines operate with quarters).

With an increase of 25% per wash and dry, it is likely our residents will no longer wish to use our facilities, and many of the properties in our area do not have washer/dryer hookups in the apartments. Many will not have a choice but to spend the extra money for the tax relief program, and it is not right for the residents to have to bear this proposed tax for a necessity of life.

We are asking that you retain the exemption for coin-operated washer and dryer vendors and ask that you prevent the burden of the tax to be passed on to the renters of Kansas.

Thank you for your time and consideration.

Respectfully,



Teri L. Powell
President/The Apartment Association of Greater Wichita



**Apartment
Council of
Topeka**

P.O. Box 3845
Topeka, KS 66604

www.ACTopeka.org

March 6, 2003

Office of the Governor
State Capital
300 SW 10th Street, Room 519 South
Topeka, Kansas 66612-1590

RE: House Bill #2323

Dear Governor:

On behalf of the Apartment Council of Topeka, I am writing this letter to address our concerns. We represent over 5700 apartment units in and around Topeka, Kansas.

Apartment Council of Topeka has a real concern about the proposed tax relief program, House Bill #2323, as it directly applies to our residents and to coin-operated washer and dryer vendors.

The proposed 5.2% sales tax would be directly passed on to the user, the residents. The machines, which operate on quarters, would not be able to collect a \$.05 tax. The machine would only be able to collect an additional quarter, thus increasing the proposed \$.05 tax to \$.25.

If it were to be approved, House Bill would financially punish families and individuals who choose to live in multi-family communities that are not washer and dryer accessible. They must do their laundry as it is a common necessity of life. Aside from the hardships of current economic conditions, our renters cannot afford the increase in a service that they have no choice in using.

We are asking that you prevent the burden of the tax to be passed on to the renters of Kansas by retaining the exemption for coin-operated washer and dryer vendors.

Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Linda Jones-Giltner'. The signature is written in a cursive style with a large initial 'L'.

Linda Jones-Giltner, CAM
President/Apartment council of Topeka



**Apartment
Council of
Topeka**

P.O. Box 3845
Topeka, KS 66604

March 24, 2002

Office of the Governor
State Capital
Topeka, Kansas 66612-1590
Attn: Governor Bill Graves

Dear Governor Graves,

I have been asked to write this letter in behalf of the 35 apartment communities and 6 owners/property management companies.

They are concerned about the proposed tax-relief program, as to how it will affect the renters of Kansas and to coin-operated vendors.

Washing and drying your clothes is a common necessity of life. If the costs go up 25%, that will have to be absorbed by the residents using these machines. A lot of the properties in our area do not have washer/dryer hookups, so the residents would have not have a choice but to pay the higher price to wash and dry their clothes.

We are asking that you prevent the burden of the tax to be passed on to the renters of Kansas by retaining the exemption for coin-operated washer and dryer vendors.

Thank you for your time and consideration.

Respectfully,

A handwritten signature in cursive script that reads "Lee Anne Skinner".

Lee Anne Skinner

Vice-President/Apartment Council of Topeka

Missouri-Kansas Coin Laundry Association
11525 Blue Ridge Boulevard
Kansas City, Missouri 64134
816-809-8454

Dear Kansas Laundry Owner:

As President of the Missouri-Kansas (Mo-Kan) Coin Laundry Association, I was recently contacted by Brian Wallace of the National Coin Laundry Association about an issue taking place in the Kansas Legislature.

There is a Committee on taxation that is writing a "repealer" bill that would no longer exempt sales tax on washer and dryer usage. The bill is HB 2902. We are not sure when or if this is going to the floor for a vote, but we wanted to inform you so you can contact your State Representative about this matter. The sponsor of the bill is Daniel Williams (Rep). There will be a hearing on March 26th in Topeka, where you are invited to testify. I will be doing so myself, on behalf of all Kansas Coin Laundry Owners, and you are also welcome to arrange testimony. You may call 785-368-7166, and ask for Winnie. She will give you whatever information you need. We feel that repealing the current exemption will create an excessive tax against the citizens of low to middle income means, as well as coin laundry owners throughout Kansas.

As you know we already pay sales and use tax on water, sewer, electricity and gas each month. We paid sales tax on our equipment when we purchased it, and will do so when we update our equipment. We pay sales tax on parts as we repair our equipment. We pay county and possibly city tax on our gross revenue per year, regardless of our profits. If this bill is made law, we would be paying tax on tax!

Please consider letting your Representative know that although we are interested in profits, we are also truly committed to serving an economically challenged public. We provide invaluable services to the common Kansas citizen who cannot afford to own a washer and dryer, and may not even be able to afford housing that provides laundry facilities. Our customers must still go to work and send their children to school in clean clothes. Coin laundry prices are largely controlled by the income of our customers!

Please inform your representative that coin laundries seldom raise their prices, rather try to absorb the shock of other economic pressures. The price of natural gas in 2000/2001 forced some owners to change prices for the first time in ten (10) years! What other industry could claim this? Ask your representative to consider that this tax will force us to raise our prices again, which must be done in 25 cent increments. This can mean a \$20 increase per month to a family of 4 who washes clothes every week. This family may have to make sacrifices in other areas, in addition to wearing clothes that are not laundered as often as they'd like. Doing laundry is not a luxury. It is a necessity for personal hygiene and public health.

This is definitely a tax on the working class citizen. Taxing the working class is a philosophy that politicians tell us they do not want. Please encourage your Representative to prove his/her philosophy on this matter.

Unless the Legislature can figure out how to tax EVERYONE on EVERY load laundered in their own equipment at home, we strongly urge them to abandon the idea of singling out poor constituents and taxing them on every load they launder in public equipment.

The Mo-Kan Coin Laundry Association meets the second Tuesday every other month for socialization & dinner, and to discuss industry issues and listen to a pertinent speaker. Our next meeting will be in May. We invite you to attend. For more information, please call me at the above number.

Our source of information for contacting you gave us only those who bought a yellow pages ad this last year. If you know of others who own coin laundries (that don't advertise), please feel free to copy this letter and pass it on. Thank you for your time and please be ready for the challenge! Call anytime if we can be of service.

Sincerely yours for the betterment of our Industry,

MISSOURI-KANSAS COIN LAUNDRY ASSOCIATION

Robert H. Meuschke II
President
Owner of *Family Laundries*

MAR-04-2003 TUE 12:13 PM AIMCO

FAX NO. 8162213901

AIMCO

Apartment Investment and Management Company

March 4, 2003

Office of the Governor
State Capital
300 SW 10th Street, Room 519 South
Topeka, Kansas 66612-1590

RE: House Bill #2323

Dear Governor:

I am writing this letter as the Regional Property Manager with AIMCO. We represent over 2,300 multi-family units, as well as 5,750 apartment dwellers in Kansas.

AIMCO has a real concern about the proposed tax relief program, House Bill #2323, specifically as it applies to our residents and to coin-operated washer and dryer vendors.

The proposed 5.3% sales tax would be directly passed onto the user, in this case, the residents. The machines, which operate on quarters, will not be able to collect a \$.05 tax. They could only collect an additional \$.25, which is now an increase of 25%.

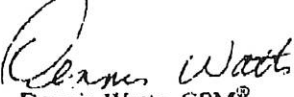
For many residents this will provide a financial hardship, those on fixed income or other government subsidized programs and in effect possibly creating less than desirable living conditions due to not able to maintain clean clothes and healthy standards.

Our renters (elderly, disabled, fixed income, affordable and conventional residents) cannot afford to bear the weight of an increase in a service that they have no choice in using. They must do their laundry. It is a necessity of life. Providing tax relief by doing their laundry is not right.

We encourage you to retain the exemption for coin-operated washer and dryer vendors. We encourage you not to tax the renters of Kansas, who are the least able to pay any additional tax.

Thank you for your consideration and listening to our views.

Respectfully,
AIMCO


Dennis Watts, CPM®
Regional Property Manager

DW:cp



Builders, Inc.

"A full service real estate company serving Wichita's needs for more than 55 years."

- Apartment Division
- Commercial Division
- Builders Construction, Inc.
- Builders Development, Inc.
- Garvey Public Warehouse, Inc.

March 6, 2003

To: House Taxation committee

Re: Review of Sales Tax Entities (Exempt)

This letter is in response to House Bill No. 2323 (Committee on Taxation)

I am writing in regards to House Bill No. 2323, concerning the issue of a proposed sales tax on coin-operated laundry receipts. I would like to point out the following reasons why this tax is unjust and un-collectible:

1. It is the most regressive tax that you could possibly impose. It primarily affects the low income, the poor, the students and the elderly.
2. Since the machines work with quarters, in order to collect the 5.3%, the machine would have to increase \$.25 on each \$1.00 cycle (25% increase to collect 5.3%).
3. Washing clothes (cleanliness) is a necessity not a luxury. To tax cleanliness in a regressive manner is simply not right.
4. The proposed tax, in essence, is not a sales tax but a gross receipts or earnings tax as it would be difficult to pass on to the consumers.

Owners of coin-operated laundries to implement a coin increase would have to spend hundreds of thousands of dollars to adjust their machines in order to pass the tax on to the consumer. Builders, Inc. has been in the multi-family housing industry in Kansas for over 65 years. It is becoming more and more difficult to provide low cost and affordable housing in the current tax environment. I am writing to ask for your support for exemption on coin-operated laundries.

Sincerely yours,

Carolyn M. Emery
Vice President Apartment Division

CE:cs

1081 S. Glendale • P.O. Box 20050 • Wichita, KS 67208
(316) 684-1400 • (316) 684-7527 Fax
www.buildersinc.com
"Building Today for a Better Tomorrow"

MISSOURI-KANSAS COIN LAUNDRY ASSOCIATION
PRESIDENT - ROBERT H. MEUSCHKE II

I want to thank you for the opportunity to exercise our rights as American Citizens to speak to you today. We live in the Greatest Country in the World that gives us the right to speak for the well being of all, in the Great State of Kansas.

I am here both as President of the Missouri-Kansas Coin Laundry Association, representing all the Coin Laundry Owners in the State of Kansas, and as a fellow Coin Laundry Owner.

I have also been asked to represent Brian Wallace, CEO of the National Coin Laundry Assn. that was unable to be here.

I am here today greatly concerned about HB 2323, removing the Sales Tax Exemption off of Coin Laundries.

There are 3 major areas that need to be covered in understanding the affect of removing the exemption.

- I. If the Exemption is removed it will apply a tax to an already Heavy taxed business.
 - A. We pay a tax to be in Business every year.(city & County
 - B. We pay a tax on our Gross Revenue.
 - C. We pay a tax when we purchase Equipment.
 - D. We pay a tax to purchase our supplies.
 - E. We pay a tax every year we own Equipment.
 - F. We pay 4 different taxes on our Electricity.
 - G. We pay 3 different taxes on our Natural Gas.
 - H. We pay a tax on the water we use.
 - I. You might say we also pay a tax on our Sanitary Sewer.

Because it is based on our water usage of which only 60% goes down the drain. The other 40% are evaporated in the dryers. That would mean a 40% tax on our water.

- J. If we lease equipment we pay tax on the entire amount Which includes paying tax on the interest.
- K. If we have employees we are taxed.
- L. Our Hot Water Systems are taxed.
- M. If we own the Property the Laundry is on we are taxed.

How is it that we take a Small Business that provides such a Needed Benefit for the Lower Class Community and Tax them to Death?

II. If the State removes the Exemption How will it affect the Owners.

- A. Last year when this was brought up we sent out a letter To every Coin Laundry in Kansas. Many of them called Me to pledge their support and call their Representatives. Several of them told me that they are barely making ends meet and they could not raise prices because their Customers could not afford it and the Owners would not be able to absorb it so they would close their doors. All of these people were in small towns that they were the only Coin Laundry in that Town. What would that do for the Health and Welfare of the People of the Town?
- B. Using the Mailing List of the National Coin Laundry Assn. along with comparing it to several of the Distributors Mailing List there is less than 500 Coin Laundries in the State Of Kansas. How much Tax Revenue could that bring in? I say not enough to balance the effect on the average Kansans Health and Welfare.
- C. In Order to pay a 5.4% tax on our Gross Washer and Dryer Revenue we will have to raise our prices by 25 cents for washer and dryer. That will be over a 20%

increase for a 5% tax because our only increment of usage is the quarter. The Average single Customer already in or below poverty level status spends \$28.00 monthly. If you increase that by 20% that is \$5.60. Making their monthly expense \$33.60. If that individuals Gross income is under \$18,000 per year that individual will not be able to pay the increase. Which will usually mean that they will wear their clothes longer before washing them. Have you ever worn the same clothes 2 - 3 - or 4 days in a row? How about wearing you're under wear 2 - 3 or 4 days in a row! I am telling you that I have witnessed this and been told this already by customers.

- D. Our economy is already in recession. How much more Can you pass on to the poor!
- E. We already have a lot of pressure put on us with the price of our Utilities fluctuating.

III. If the State removes this Exemption how will it affect the citizens of Kansas.

- A. If they have the ability to own their own Washer and Dryer they will have the Luxury to not have to pay this Tax.
- B. Many will regress to the early 19th Century and before With their Cleanliness. That will create more Health problems. The Grade Schools all across our nation now fight the battle regularly with Head Lice. How much more will that and other problems grow!
- C. The many citizens that fall in the poverty range and below Will feel discriminated against because of this being a Tax on the Poor.
- D. Based on some Social Economic Demographics that I Was able to gather out of the State of Wisconsin. I found That 49% of Laundry Users were considered under The United States Guidelines for Poverty. Fifteen Percent

made less than \$500 monthly. Ten Percent were over 65 and lived off Social Security only. There are many comparisons that compare Kansas to Wisconsin. So I think this would be a comparison to the average Coin Laundry Customer in Kansas. (There are only 2 states that have done a Social Economic Study. I chose Wisconsin because it is similar to Kansas in size of cities, industry, and farming.)

In Closing Coin Laundries provide a necessary provision for the Health of all that use them.

I challenge each and every one of you before you vote to visit a Coin Laundry either in this city or your own area and take note of the average Customer; Look at their Clothing; Watch how they do laundry (many do Gray-Wash to save money); and Visit with a few of them, find out where they work and how much they make. I think that if you do this and take note of what has been said here you will have to come to the affirmation that you cannot remove this exemption.

Thankyou



Kansas Society of Certified Public Accountants

1080 S.W. Wanamaker, Suite 200 • P.O. Box 4291 • Topeka, Kansas 66604-0291 • 785-272-4366 • Fax 785-272-4468

March 7, 2003

Chair Edmonds and members of the Committee.

On behalf of the 2,600 members of the Kansas Society of Certified Public Accountants, I appreciate the opportunity to appear before you today in support of HB 2322 and the restoration of the sales tax exemption for custom software design.

I am T.C. Anderson, Executive Director of the organization.

I would like to share with you background relating to this issue:

In 1981 the Legislature enacted KSA 79-3603(s) as it is printed on page 6, lines 3 through 10 of the bill. Then Secretary of Revenue Michael Lennon and his staff took the position that the sales tax applied to "a canned" or multiple sale software as opposed to the custom software prepared as a professional service by our members for their clients. As you will recall, professionals are exempt from collecting sales tax from their clients on the services they perform.

However, six years later the Department of Revenue got around to promulgating a regulation on the sale of software. This regulation expanded the sales tax to the transfer or design of a custom software package.

The Kansas Society and others objected to the regulation and in 1988 the Legislature enacted clarifying language that can be found on lines 35 and 36 of page 5 of the bill and on lines 10 to 21 of page 6 which clearly exempts custom software design from sales tax.

This language was Kansas' law until 2002 when the Legislature removed the clarifying language that I am asking you to restore today.

I think it is interesting to note that in 1987, 22 states, including Kansas, taxed custom software design, according to the attached magazine article.

Many of you have seen this April 1997 Research Report (Attached) from the Federation of Tax Administrators. Table 11, on page 10, reflects only 16 states still taxed the design of custom software. In a Sales Tax Update conducted by the Federation and published December 20, 2002, Maine and Pennsylvania noted repeal of their sales tax on custom software, and Louisiana indicated it was phasing out its tax so as to expire after June 30, 2005. You will note I have added Kansas to the list. I hope we can remove Kansas from the list, once again.

If there are questions I'll attempt to respond. If they are technical in nature I ask that I be permitted to defer them to the experts who will also be testifying in support of this bill.

have a hard time keeping up with IBM.

"It's very important where IBM draws the line," says Ivan Jellinek, president of Evergreen Consulting, also in Irvine, and an SNA expert. "Now they're saying that PU 4 and PU 5 are not part of SNA but part of ACF/VTAM. That means down the line they can say, 'That's part of a proprietary product, and we don't make that available anymore.' They've already done that with a lot of source code."

At least one vendor has stayed away from PU 4 and 5 protocols in part because of its belief that IBM is steering vendors toward PU 2.1. Netlink Inc., Raleigh, N.C., is developing its own PU 2.1 controller that it says can replace PU 5 communications processors and also support PU 2 devices such as 3274 controllers. "But we're staying away from PU 4 and PU 5," says Netlink product marketing director Richard Buckle. "It's pretty clear that IBM wants to shut down the interfaces to PU 4 and 5. That's the realm where IBM wants to enforce control."

Locked into Protocols

But some vendors and their customers have little choice but to stay with the PU 4- or PU 5-based SNA gateways used on their current products. Unisys, for example, is currently marketing two PU 4-type gateways into SNA, one for its Burroughs hardware line and one for its Sperry DCP front-end communications processor.

The change in PU 4 and 5 format availability has given some vendors who are not yet committed to using those protocols something new to think about. Digital Equipment Corp., for example, does not currently market PU 4- or PU 5-based interconnect products. According to DEC interconnect products marketing manager Mike Gayowski, "Of

course the change in status of PU 4 and 5 concerns us. I think it shows that from the viewpoint of getting protocol information, long-term OSI will be an easier path for building backbone solutions. From the standpoint of our current products, it doesn't affect us."

Currently, DEC's VAX-to-SNA products use the PU 2.1 protocols and support interfaces including LU 6.2. Gayowski says that at least for the time being, DEC will continue to focus on adding functions to its PU 2.1 and LU 6.2-related interconnect products rather than adding PU 4 or 5 support.

One such user is Aetna Life and Casualty Co. in Hartford, Conn., which earlier this year went with the VAX over IBM's 9370 and is now contemplating installing DECnet in its commercial insurance division, with a PU 2.1 gateway connection to the corporate SNA network. According to Aetna director of telecommunications Andrew Benko, the company had been concerned about whether DEC could keep up with additions to SNA-related facilities such as IBM's DISOSS. He says that recent DEC announcements have reassured Aetna.

Vendors who have committed to the PU 4 and PU 5 SNA protocols have much less reason to be sanguine, however, say some observers. IBM's decision to stop publishing PU 4 and 5 formats in public domain documents shows that there are limits to IBM's idea of openness, according to John Pickens, director of communications architecture for SNA services provider Communications Solutions Inc., Sunnyvale. Says Pickens, "IBM wants to be open only in terms of interfaces such as LU 6.2. But they are less and less interested in letting people have access to internal protocols like PU 4 and PU 5."

TAXATION

Tax Collectors Eye Custom Software

Although the impact of the fees hasn't hit home yet, some users are beginning to look for discounts.

BY SUSAN KERR

As state governments look for new ways to pay their bills, several have turned their hungry gazes upon a fertile and still relatively untapped source of tax income: custom software and service purchases.

Although computer industry trade groups are beginning to realize the truth behind the old maxim that taxes are as inevitable as death, they're lobbying hard to gain political leverage now before this custom software taxation becomes a trend. Two of the nation's most populous states, Florida and Texas, have brought the issue to a head by deciding to tax customized software. Several other states, most notably Washington, are seen as potential followers. Nevertheless, antitax lobbying efforts have taken place with little aid or even awareness from the group of citizens seemingly with the most to lose from the tax legislation.

"I hate to say it, but we're really uninformed here. There's nobody dealing with it," says an MIS manager at a large Florida defense company. He may soon find himself with little alternative other than to deal with it. This summer, in the most sweeping of all state taxation moves, Florida decided to impose a 5% sales and use tax on almost all service industries, including custom software developers. The scope of Florida's taxation has met with so much service industry opposition, however, that in ne

primary, voters may get the chance to decide on whether or not the tax stays.

While Florida may have tried for legislation too radical and far-reaching, many other states are watching closely and picking up pointers from the sunshine state's experiences. Almost all states already tax packaged software. Yet, as many economies become more service oriented, taxing such previously taboo service products as customized software is seen as a relatively painless way for states to deal with deficits. It's certainly a more palatable political move than raising the income tax.

The result could be that some users of custom software and services will suddenly find the price of their purchases increased by a few percentage points. Taxes "wear down people's budgets," says Hank Post, chairman of Comp-U-Staff Corp., Towson, Md., and state sales tax committee chairman for



COMP-U-STAFF'S POST: The tax House Taxation

Attachment 8

Date 3-7-83

ADAPSO. "All of a sudden, he [the customer] has 5% less—and he's going to spend 100%, not 105%." ADAPSO is opposed to the taxation of any software products.

Debate Over Effect

Yet, what goes around comes around. While software companies will be forced to charge customers tax (as well as be responsible for all the resulting paperwork), some consumers believe they'll be able to squeeze some of that price increase out of their suppliers' pockets. This may be at least one good reason for the markedly different level of activism when comparing users to vendors.

"We haven't started our budget for 1988 yet, so it hasn't hit us yet," says an MIS director in Miami, who, like several others contacted by DATAMATION, asked that neither he nor his employer be identified. "Yes, we always think a 5% jump is a lot. Yes, it's something distasteful, but hopefully we'll get a larger discount from our vendors to compensate."

Likewise, some vendor advocates acknowledge the fear that large consumers of software products have a big bargaining chip. If taxes mean getting less software for your money, some corporations may decide to bring programming in-house—and away from third-party suppliers.

Others don't see it this way at all. Lawrence J. Schoenberg, chairman and chief executive of AGS Computers Inc., Mountainside, N.J., which does a lot of custom work, says customers are always looking for ways to bring down prices. Schoenberg finds it "fanciful," however, that users would threaten to bring programming in-house on the basis of tax increases. "The problem is not an issue of in-house versus outside," he says. "They

[customers] could always pull it in-house and get a lot bigger savings than 8%. Then why haven't they already?"

Although big corporations may believe they have a bargaining chip, it's unlikely that smaller concerns have the same sway over vendors. Unfortunately, say tax lobbyists, small companies are not complaining either.

"Major users are aware of the tax," explains Ray Kudisch, a tax consultant for Racal-Milgo Inc., Sunrise, Fla., and the chairman of the American Electronics Association's Florida Government Affairs Committee, "but if you look at the number of large companies in Florida versus the number of small companies, the ratio is unbelievable [in favor of small companies]." No matter what the size of the company, including ones in Racal-Milgo's range, "the cost of doing business in Florida has just gone up."

In the case of Florida, certain highly visible consumer industries, such as barber-shops, were exempted from the service tax. Likewise, in Texas, where customized software products will face a new tax as high as 8% next January, many highly vocal service providers, including accountants and lawyers, won't have to charge sales tax on their services, according to L. Fredrik Buss, executive director of the 185-member Texas Computer Industry Council in Austin.

"A lot of people in the computer industry like to pretend politics don't exist," Buss charges. "I think this [tax law] has increased their political awareness. This 8% is a heavy, heavy load to drop on customers."

A Hunger for Revenue

While no one wants to pay more tax, the responsibility issue has thrown some of the industry groups into slightly different stances.

Which States Impose the Software Levy

The following chart shows how the various states generally apply their sales tax provisions, by law, regulation, or ruling, to sales of canned and custom computer software. (Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose sales taxes.) "T" indicates that such sales are taxable; "E" indicates that such sales are exempt.

| STATE | CANNED PROGRAMS | CUSTOM PROGRAMS |
|------------------|-----------------|-----------------|
| Alabama | T | E |
| Arizona | T | E |
| Arkansas | T | E |
| California | T | E |
| Colorado | T | E |
| Connecticut | T | E |
| Washington, D.C. | T | E |
| Florida | T | T |
| Georgia | T | T |
| Hawaii | T | T |
| Idaho | T | T |
| Illinois | E | E |
| Indiana | T | E |
| Iowa | T | E |
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| Nevada | T | T |
| New Jersey | T | E |
| New Mexico | T | E |
| New York | T | E |
| North Carolina | T | E |
| North Dakota | T | E |
| Ohio | T | E |
| Oklahoma | T | E |
| Pennsylvania | T | E |
| Rhode Island | T | T |
| South Carolina | T | T |
| South Dakota | T | T |
| Tennessee | T | T |
| Texas | T | T |
| Utah | T | E |
| Vermont | T | E |
| Virginia | T | E |
| Washington | T | E |
| West Virginia | T | T |
| Wisconsin | T | T |
| Wyoming | T | T |

"We went into it [knowing] that the service industry hasn't been taxed for a long time and it will be taxed," Kudisch reluctantly agrees. Thus, in the Florida fight, the American Electronics Association (AEA) focused more on "generic issues," such as how the bill was structured.

Two years ago, the computer industry was able to persuade the Texas government not to go ahead with a tax bill. That didn't work this year, although the council has had a few successes, including preventing legislation that would have taxed software sold inside Texas but used outside the state.

An Air of Inevitability

"I'd rather not pay it," comments Bill Pfeiff, manager of hardware and software planning at FMC Corp., Dallas. But, he adds realistically, "If it comes, it comes. And I'll just have to budget for it. It's inevitable. All the states are looking for more money."

Also at issue in some state capitals is the taxing of

companies such as Hewlett-Packard object to as well. Gary Fazzino, HP's state government affairs manager in Palo Alto, says that while HP has no companywide lobbying stance, the pyramiding approach favors big, vertically integrated corporations that do most of their own work.

Taxing software developers, though, took a step backward in a recent California decision. The state's Board of Equalization ruled in favor of the AEA and other groups over a state rule formally titled regulation 1502, Automatic Data Processing Services and Equipment. Although 1502 has been on the books for years, state auditors recently reinterpreted the rule to mean that software developers were to be taxed on their royalty fees and licensing arrangements. Under a new board, the rule has been changed so that developers are no longer taxed.

"That was a tax that the little guys were getting killed on," says Terry Ryan, tax manager at Apple, a vocal opponent of 1502. Ryan notes that the big companies were able to get around the law by going out of state to copy programs. While that's no longer needed in the wake of this past summer's rulings, questions still remain. In addition to problems defining different areas of software, state comptrollers typically have different opinions as to what constitutes a computer. For example, under 1502, microprocessors are not viewed as computers, thus their code is still taxable, says Ryan.

Delaying Tactics

The software industry is healthy, thus taxing may be inevitable. The big guessing game concerns the question of how long taxation can be delayed. One lobbyist against the old 1502 interpretation says that now the trick is not to make a big deal about the

A Challenge Webster Wouldn't Relish

So, just what is the correct definition of "custom" software? Trade organizations as well as the various states have taken their own tacks.

Traditionally, battle lines have been drawn on the basis of tangible versus intangible property or canned versus custom. The American Electronics Association (AEA) recently struggled to go one step further with the definition of custom versus canned software at the behest of the Multistate Tax Commission, a 19-state advisory board that is comprised of high-level state government staffers and which makes suggestions to state legislatures on tax issues. Its proposals, however, are not binding.

The AEA's director of state government affairs, John Mancini, settled on a lengthy statement to the effect that a custom program is one that is developed in-house, or by special order, and is unique. However, Mancini wrote to the commission, "it may incorporate preexisting routines or program components." Conversely, while a canned program originally may have been developed on a custom basis, Mancini described canned software as the "identical program [that] has been licensed, sold, or leased more than once."

At the moment, there is no uniform approach to state taxation. Each state tends to have its own method of imposing sales and use taxes on computer software. Among those states that do tax custom software, Wisconsin and Rhode Island each make exceptions for those "programs in the form of written procedures such as program instructions listed on coding sheets." Georgia, another custom software taxer, exempts software written to a customer's specific needs and at his place of business.

change in the bill. "We're trying not to play it up or to show there's a real tax shortfall because of it," he says. Some of the big California software concerns are likely to save millions of dollars because of the change.

It is equally unlikely, however, that any software consumers will see a corresponding drop in prices following the changed ruling. The software industry is getting older and wiser, and it senses the voracity of the tax board. Thus, many companies are taking great pains to write contracts with customers that protect themselves if cited for tax liability, says Post. Still, one of the biggest fears is that states will reinterpret laws, as did California, and attempt to collect money retroactively.

Along with the fear of retroactive taxes, the most

common complaint on the part of vendors is the inconsistency among states and the chore of keeping track of different rules.

The Multistate Tax Commission is looking into that, says AEA's director of state government affairs, John Mancini. This advisory board, which consists of high-level state government staffers, makes suggestions to member state legislatures on tax issues. Its proposals, however, are not binding. "They're trying to develop some conformity so companies are not at cross-purposes state to state," says Mancini. "But even if the distinction is maintained between canned and custom programs, it will be increasingly difficult. States are putting a wide brush across services and taxing them."



WASHINGTON MAY BE THE NEXT STATE TO TAX CUSTOM PROGRAMS.

software licensing fees—such as those paid by the original developers and/or resellers of software packages. If the whole product development process is taxed and then the end user also has to pay taxes, that's double or triple taxation, they complain. Florida, for one, does have such pyramiding sales taxes.

This pyramiding is what

SALES TAXATION OF SERVICES: 1996 UPDATE



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As states have examined expansion of the sales tax base, a number of them have begun to impose the tax on such personal services as health clubs, instructional services, and certain cleaning and maintenance services. However, these services are still largely untaxed in most states, with no fewer than 20 states applying sales tax to these services.

Table 10
Taxation of Health Club Services
(By State)

| | |
|-------------|----------------|
| Arkansas | New Mexico |
| Connecticut | Ohio |
| Delaware | South Carolina |
| Hawaii | South Dakota |
| Idaho | Tennessee |
| Iowa | Texas |
| Kansas | Vermont |
| Minnesota | Washington |
| Missouri | West Virginia |
| Nebraska | Wisconsin |

Business Services. Thirty-nine business services were examined in the survey including various forms of advertising, commercial linen, employment agencies, security, janitorial, investigative, secretarial, and court reporting (numbers 73 through 106). The most widely taxed business services are printing, taxed in 45 states, followed by photo-finishing and photocopying services, taxed in 44 and 42 states, respectively. Meanwhile, advertising services are largely untaxed, only being taxed in the states with broad-based sales taxes. Most of the expansion in business services has been in maintenance and janitorial services (an increase from 13 to 18 states since the 1990 survey), telephone answering services (10 to 18), and commercial art and graphic design (13 to 20).

While all the services examined in this category are not direct inputs into production, concern over raising business costs as well as the relative novelty of taxing services not associated with tangible personal property is evident in this category. Despite the revenue potential, many states still leave business services largely untaxed.⁷ However, as pointed out in the previous section, the business services area is one which states, looking to broaden their sales tax base, will examine.

With the exception of those services linked to the production of tangible goods (e.g., printing and photo finishing), the other services examined in the survey are taxed in few states. The survey points out that 19 states tax no more

than four of the services. Several states do tax a substantial number of services in the list. Three states—Delaware, Hawaii, and Washington—tax all 34 business services. New Mexico taxes 32, while South Dakota and West Virginia tax 28 and 26, respectively. Some states have imposed the sales tax on selected lists of business services. Connecticut has a long list of business services, taxing 20 of the 34 services. Iowa and Pennsylvania also tax respectively, 18 and 17 of the total number of business services.

Computer Services

Computer software, programming, and related data processing services have presented a problem for traditional sales taxes. The problems stem from the intangible nature of programming instructions, the lack of need for a tangible medium for providing information, and the nature of the data and information processing services performed with computers, as well as the professional nature of the programming design and development services. States have, however, begun to tax certain services associated with computers. The survey asked states how they tax canned (i.e., pre-packaged) software, customized software, and programming services. Also examined in the survey were information, data processing, and mainframe access services (numbers 107 through 113).⁸

All sales tax states, except Alabama,⁹ tax canned or packaged software. Nine states—Idaho, Iowa, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, Utah, and Virginia—tax only canned software. Nine other states—Connecticut, Delaware, D.C., Hawaii, New Mexico, Pennsylvania, South Dakota, Texas, and Washington—tax all forms of computer services including information services. The remaining states tax a mixture of computer services.

There is great variability in how professional services related to computer software sales are defined. While South Carolina defines any service associated with software sales

⁷In William F. Fox and Matthew Murray, "Economic Aspects of Taxing Services." *National Tax Journal*, March 1988, pp. 19-36, business services is second only to the construction sector in potential revenue-generating ability.

⁸For a more detailed discussion on taxation of computer software, see L.J. Kuttan, "Software Taxation—The Current Picture," in *State Tax Notes*, July 1, 1996, pp. 45-48.

⁹Alabama Department of Revenue released regulation C28-001 which defines canned computer software as tangible personal property and subject to the sales and use tax effective March 1, 1997.

as a taxable service. Nebraska taxes any service that results in the production of software. Tennessee taxes custom programming services but not consulting services performed by the vendor. Michigan, Minnesota, New York, Utah, and Virginia exempt all professional services only if separately stated when modifying canned software. Ohio exempts sales of any software package if the charge for revision is greater than 51 percent of the total cost. Colorado exempts the modification of canned software only if consultation or an analysis of customer needs is part of the service.

Similarly, two states subject certain computer services to different tax rates. Washington defines canned or custom software as a tangible good subject to the 6.5 percent sales tax plus 0.471 percent Retail Business and Occupation Tax. All other services are defined as professional services subject to a 2.0 percent Business Services Tax. Delaware treats canned software as a sale of goods and imposes an occupational tax of 0.75 percent on retailers (lower rates apply to manufacturers and wholesalers), while all other computer services are taxed at 0.4 percent.

While Alabama stands out as the only sales tax state not to tax canned software, relatively few states tax custom software. This is not surprising since custom programming consists mostly of labor services producing an intangible good. Still, 16 states tax customized software as pointed out in Table 11. Fifteen states tax other types of computer services. Table 12 summarizes which states tax information services, data processing, and mainframe computer access services.

Table 11
Taxation of Custom Software
(By State)

| | |
|----------------------------|--------------------------------|
| Connecticut | New Mexico |
| Delaware | Pennsylvania (1997) |
| District of Columbia | South Carolina |
| Hawaii | South Dakota |
| *Louisiana | Tennessee |
| Maine (No Date) | Texas |
| Mississippi | Washington |
| Nebraska | West Virginia |
| KANSAS (2002) | |

*EXEMPT AFTER 6/30/05

Admissions and Amusements

Admissions and amusements is the most widely taxed service category in the survey, with over half the states taxing 10 or more services (out of 14). Some states tax these services under special taxes or allow local governments to

Table 12
Taxation of Computer Services

| State | Info. Services | Data Processing | Mainframe Access |
|--------------------|----------------|-----------------|------------------|
| Connecticut | Yes | Yes | Yes |
| Delaware | Yes | Yes | Yes |
| Distr. of Columbia | Yes | Yes | Yes |
| Florida | Yes | No | Yes |
| Hawaii | Yes | Yes | Yes |
| New Mexico | Yes | Yes | Yes |
| New York | Yes | Yes | No |
| Ohio | Yes | Yes | No |
| Pennsylvania | Yes | Yes | Yes |
| Rhode Island | No | No | Yes |
| South Carolina | Yes | No | No |
| South Dakota | Yes | Yes | Yes |
| Texas | Yes | Yes | Yes |
| Washington | Yes | Yes | Yes |
| West Virginia | Yes | No | No |

tax these activities. Maryland and Washington allow local governments to impose an admissions tax in addition to the state tax, while Ohio and Pennsylvania have only local taxes. However, some states still tax very few services in this category. Seven states — California, Colorado, Massachusetts, Michigan, Nevada, Pennsylvania, and Virginia — do not tax any other service except film and videotape rentals. Another three—Indiana, Maine, and Rhode Island—tax only videotape rentals and cable TV. Illinois is the only sales tax state that does not tax any service in this category.

The survey examined a wide variety of amusement services (numbers 119 through 132) including admissions to amusement parks, school and professional sporting events, and cultural events. The survey asked how states tax rentals of videotapes and films by theaters as well as cable TV services. Other amusement services covered include parimutuel betting, billiard parlors, bowling alleys, circuses, video and pinball machines, and membership fees for private clubs.

Videotape rentals are the most widely taxed service in the category, taxed in 45 states. Of the sales tax states, only Illinois does not tax video rentals. Michigan, Missouri, and Rhode Island give the vendor the option of paying the sales tax on their purchase of the tape or charging a sales tax on rentals. This contrasts with film rentals to theaters, which are taxed in only eight states. Indeed, most states treat film rentals as an input to production, charging sales taxes on the final product (the viewer). This is illustrated by nine states

Testimony before the House Taxation Committee
March 7, 2003
Regarding House Bill 2322

By Terry Kimes, CPA, CITP
President, Mize, Houser & Company

Chairman Edmonds and Members of the Committee:

Thank you for the opportunity to testify in favor of HB 2322.

My name is Terry Kimes and I am President of Mize, Houser & Company, a CPA firm with Kansas offices in Topeka, Lawrence and Overland Park. We employ 150 people in Kansas and provide professional services to clients for the development of custom software by 20 analyst/programmers on our staff.

I am in favor of repealing the sales tax imposed on the sale of custom computer software for a variety of reasons.

In 1981 Kansas began taxing the services of developing custom code but in two separate cases in the late 1980's the Kansas Supreme Court held that "custom software" should be viewed as intangible personal property and thus not subject to K.S.A. 79-3603, which taxes tangible personal property. During the waning hours of the 2002 legislative session, a proposal seeking to tax sales of "custom code" was discussed and without any hearings that proposal was incorporated into Senate Bill 39.

I believe that the services for developing custom code are professional services and therefore the taxing of these services should be repealed and added to your review of taxing other professional services. Why are the services of the professionals that our firm employs for development of custom code being singled out from the services of our other professionals? Our profession recognizes information technology as a valuable service to our clients and has even created a special certification. I am both a CPA as well as a Certified Information Technology Professional. This is a designation of the American Institute of CPA's. The analyst programmers performing these services in our firm are professionals with degrees in accounting, computer science or information services mostly from Kansas Universities. Our clients do not understand when they come to us for services that as of July 1, 2002 these professional services are now subject to sales tax.

Taxing these services is harmful to small and medium size businesses in Kansas. Large corporations needing to have software developed often have IT professionals in-house that can perform the necessary services without any sales tax. However, small and medium sized businesses not having such IT professionals on staff must contract with third parties to provide the necessary services. Thus, these small and medium sized businesses are now being required to pay sales tax on transactions which larger businesses can perform in-house.

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This tax also puts Kansas companies at a competitive disadvantage compared to companies that do business in states that do not impose this tax. If two different businesses decide they have a need for custom computer software then for instance a company in Missouri will have less cost than a Kansas company.

I am also concerned because it would appear, based on the Department of Revenue's notice, that services that heretofore have been viewed as professional are now being viewed as taxable. I have distributed a copy of that notice. You may note on page 3 that the notice points out items the Department views as part of custom code. They include "determining equipment and personnel required and how they will be utilized", "designing storage and data retrieval systems", "determining what data communications and high-speed input-output terminals are required", "feasibility studies", "evaluation of bids", "training services" all of which I feel are not part of "custom code"

I support the repeal of this tax and thank you for your time and attention.

Notice

Notice Number: 02-10
Tax Type: Kansas Retailers' Sales Tax
Brief Description: Imposition of sales tax on sale custom computer software and services of modifying, altering, updating or maintaining such software.
Keywords:
Approval Date: 07/01/2002

Body:

Office of Policy & Research

July 1, 2002

Notice 02-10

Imposition of sales tax on sale custom computer software and services of modifying, altering, updating or maintaining such software

Summary

Beginning July 1, 2002, Kansas and local retailer's sales tax is imposed on the sale of custom computer software and the services of modifying, altering, updating or maintaining custom software. Under prior law, sales tax was imposed only on the sale of canned computer software, and the services of modifying, altering, updating or maintaining canned computer software. Sales of both custom and canned software are now subject to sales tax, as are the services of modifying, altering, updating or maintaining software.

Canned software includes, among other things, prepackaged word processing programs, game programs, educational programs, spreadsheet programs including bookkeeping and payroll programs, and video game cartridges. Custom programs are those developed from scratch or those uniquely designed and custom tailored to meet the customer's specific requirements.

Under prior law, the sale of any custom computer program originally developed for the exclusive use of a single end user, as well as the sale of modification services when developed exclusively for a single end user (if charges for such modification were separately stated on the invoice), were expressly excepted from the imposition of sales tax on computer software and the sale of services of modifying, altering, updating or maintaining computer software. See K.S.A. 2001 Supp. 79-3603(s). Section 6 of 2002 Senate Bill 39 amended 79-3603(s) by removing the exception for custom computer software.

Definition of Computer Software

"Computer software" is defined at Section 6, 2002 Senate Bill 39 as follows:

information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any

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canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software.

Computer software is defined as "tangible personal property" under Kansas sales tax law at K.S.A. 79-3602(f), which provides:

"Tangible personal property" means corporeal personal property. Such term shall include any computer software program which is not a custom computer software program, as described by subsection (s) of K.S.A. 79-3603, and amendments thereto.

Because Section 6, 2002 Senate Bill 39 deletes the description of custom computer software formally contained in K.S.A. 79-3603(s), custom computer software is also included in the term "tangible personal property" as of July 1, 2002.

K.A.R. 92-19-70 provides:

Computer software. (a) Sales tax shall be imposed on the gross receipts received from the sale of computer software. Computer software includes all software or computer programs, whether contained on tapes, discs, cards or other devices or materials which direct a computer or hardware to perform different functions, and includes customized software, canned software, operational software, application software, systems software and other forms of software or computer programs.

(b) Sales tax shall be imposed on the total cost to the consumer without any deduction or exclusion for the cost of:

(1) The property or service sold;

(2) ~~labor or services used or expended, including:~~

(A) Program development, problem definition;

(B) analysis, design, coding, testing; and

(C) implementation, evaluation, maintenance and documentation;

(3) materials used;

(4) losses;

(5) overhead or any other costs or expenses; or

(6) profit, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill.

(c) The principal line of business of the seller is not material when determining the taxability of sales of computer software. Each bank, savings and loan or other thrift institution, accounting firm, computer program developer, dealer and other person is deemed to be a retailer when selling computer software at retail to the final user or consumer. Each retailer shall collect sales tax on the gross receipts received from the retail sale of computer software.

Under K.S.A. 79-3602(c), a sale includes "the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred." These provisions make sales of licenses to use computer software subject to tax, regardless of whether the software is transferred to the buyer by floppy disc, CD-ROM, telephone modem, or via the Internet or other electronic media. Sales of computer software are taxable regardless of how possession or the right to use the software is transferred.

* Charges for performing the following activities, whether separately stated or not, are subject to sales tax when part of the sale of computer software: (a) designing and implementing computer systems (determining equipment and personnel required and how they will be utilized); (b) designing storage and data retrieval systems (determining what data communications and high-speed input-output terminals are required); (c) consulting services (study of all or part of a information management or data processing system); (d) feasibility studies (studies to determine what benefits would be derived from a software project); (e) evaluation of bids (studies to determine which manufacturer's proposal for computer equipment would be most beneficial); (f) providing technical help, analysts and programmers, usually on an hourly basis; (g) training services; (h) software set up; and (h) maintenance of software.

Sales by Kansas software retailer to in-state customers

Sales by a Kansas retailer of computer software to an in-state customer are considered a Kansas retail sale of tangible personal property, subject to state and local sales tax.

For purposes of determining which local sales tax applies to the sale of computer software, the situs or location of the sale must be identified. The general rule is that local sales tax is situated to the retailer's place of business. K.A.R. 92-21-7 provides:

92-21-7 Place of sale. For the purposes of local sales tax, all retail sales occur at the place of business of the retailer unless delivery is made by the retailer or his agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination or unless otherwise specified by Kansas statutes or regulations. For the purpose of this provision it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

If a retailer has more than one location in Kansas and if two or more of such locations participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded for acceptance, approval of credit, shipment or billing. For the purposes of this rule, an employee's activities will be attributed to the place of business out of which he works.

Local sales tax should be charged based on the location of the retailer making the sale. This rule applies when the retailer orders something from an out-of-state manufacturer or distributor to be delivered to the retailer's business or when the retailer orders something

from an out-of-state manufacturer or distributor to be delivered to the customer's location.

Sales by Kansas software retailer to out-of-state customers

Sales by a Kansas retailer of computer software to an out-of-state customer would be considered a sale in interstate commerce. K.A.R. 92-19-29 provides:

92-19-29. Sales in interstate commerce. When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: *Provided*, The property is not returned to a point within this state. The most acceptable proof of transportation outside the state will be:

- (a) A waybill or bill of lading made out to the seller's order calling for delivery; or
- (b) An insurance or registry receipt issued by the United States postal department, or a post office department's receipt; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods.

However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state.

If computer software sold by a Kansas retailer is delivered to the out-of-state customer in Kansas, then the transaction would be considered a Kansas sale, subject to sales tax. If delivery to the out-of-state customer occurs outside the borders of Kansas, then the transaction would not be considered a Kansas sale and would not be subject to Kansas tax. Computer software delivered to the out-of-state customer electronically and downloaded at the customer's out-of-state location will be considered a sale in interstate commerce, not subject to Kansas sales tax. If delivery outside of Kansas is by the US Postal Service, common carrier such as UPS, or the retailer's or retailer's agent's vehicle, the sale is regarded as taking place in the state of delivery and is not subject to Kansas tax. Delivery in Kansas to a contract carrier makes the sale Kansas taxable when the carrier is acting as the buyer's agent.

Sale of Computer Software by Out-of-State Retailer to Kansas Customer

Sale of computer software by an out-of-state retailer to a customer located in Kansas is subject to Kansas compensating use tax. If the out-of-state retailer has sufficient nexus with Kansas, the out-of-state retailer is obligated to collect the use tax from the customer and report and remit it to the Department. If the out-of-state retailer does not have nexus with Kansas, then the customer is obligated to accrue Kansas use tax on the purchase and report and remit it to the Department.

Nexus refers to the presence or contacts that an out-of-state business has with a state. A state can impose use tax collection duties on an out-of-state business only if the business has sufficient contacts or presence in the state. Presence in the taxing state of owned or leased personal or real property, offices, facilities, or agents, representatives or employees can

establish nexus. If the out-of-state business has no property, offices, employees, or agents who operate in Kansas, then it will have no legal duty to collect use tax on sales of computer software to Kansas customers. Nexus would not be achieved if the only activity in Kansas is delivery of software, by shipment of a disk by mail, UPS, common carrier or by downloading from the Internet.

Nexus would be created if the out-of-state business sends employees into Kansas, pays independent contractors or agents to operate here, regularly delivers into Kansas using its own vehicles, appears at trade shows here, employs Kansans to perform service work here, or conducts similar activities here. If an out-of-state business, as lessor, leases computer hardware or software in Kansas, it would have nexus and would be required to collect and remit use tax on leases to Kansas lessees. See K.S.A. 79-3702(c); K.S.A. 79-3702(g).

Computer Software Modification and Maintenance

K.S.A. 2001 Supp. 79-3603(s), as amended by Section 6 of 2002 Senate Bill 39, imposes sales tax on the sale of services of modifying, altering, updating or maintaining computer software. K.S.A. 79-3603(q) specifies that alteration, repair and maintenance services done to tangible personal property are subject to Kansas sales tax. Computer software is defined as "tangible personal property." K.S.A. 2001 Supp. 79-3602(f)(1). K.S.A. 79-3603(r) imposes a sales tax upon: "the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q). . ." The sale of computer hardware and software maintenance agreements are taxable, pursuant to K.S.A. 79-3603(r).

The services of modifying, altering, updating or maintaining computer software are presumed to be performed at the location of the software being used by the customer at the customer's premises. Kansas sales tax would apply to such services performed in Kansas. Fees charged to diagnose a computer software problem for a customer are considered part of service of modifying, altering or maintaining the software and are part of the taxable gross receipts.

Software that modifies or alters existing software is considered separate from the existing software and is taxable.

Date Composed: 07/29/2002 Date Modified: 07/29/2002

MEMORANDUM

TO: The Honorable John Edmonds, Chairperson
House Committee on Taxation

FROM: Mark Beshears, Assistant Vice President,
State and Local Tax for Sprint

DATE: March 7, 2003

RE: House Bill No. 2322

I am Mark Beshears, Vice President of State and Local Tax for Sprint Corporation located in Overland Park, Kansas. I appear today in my dual capacity as tax officer for Sprint and as a member of the Kansas Tax Coalition. I am here to ask for your support for House Bill No. 2322 which would exempt custom computer software from the state sales tax. As you will recall, the 2002 Legislature eliminated the exemption for custom computer software in the final hours of the legislative session. That change was made without any public hearing or any formal consideration of the impact that such a change would have on the business community in the state. At the time the 2002 legislation was passed, the Department of Revenue had estimated that the removal of the exemption would generate approximately \$15 million in revenue. It has now been disclosed that there is no way in which the Department can determine precisely how much revenue the repeal of the exemption has generated. It may or may not be producing the projected \$15 million as represented by the Department.

When companies determine the states in which they prefer to do business, they examine the stability of the state tax structure. Making a substantive change of this magnitude in the middle of the night without any input from the effected parties is not putting Kansas in the best light. Had there been an opportunity for hearings on the proposal, it is unlikely that such a measure would ever had passed the legislature. The repeal of the exemption was a bad decision from a revenue perspective and even a worse decision from a business development perspective.

There are serious questions that the 2002 legislation as drafted even accomplished what the legislature had intended. An analysis of the 2002 legislation suggests that failure to make certain amendments in the definitional section actually resulted in the retention of the exemption. More importantly, the manner in which the 2002 S.B. 39 was drafted enables businesses to plan around the tax by moving the effected software services out-of-state. The practical effect is that business which was once done in Kansas is no longer done in the State of Kansas.

The removal of the exemption in 2002 is expected to cost Sprint's long distance division approximately \$18 million. This would include transactions which take place between companies within the Sprint group. Sprint employs 14,451 people who live and work in Kansas with an annual payroll of \$992 million dollars. In 2001,

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Sprint paid \$26,750,000 in property taxes. The company paid \$2,723,000 in unemployment taxes. In addition, compensating use taxes account for \$21,394,753. Sprint employees also pay state income tax withholding in the amount of \$48,530,000. In summary, nearly \$100 million dollars is paid annually by Sprint in Kansas taxes.

Notwithstanding this tax burden, in 2002, Sprint invested \$38 million in its Kansas local telephone network. The company also purchases over \$520 million in goods and services from Kansas businesses. These obviously are meaningful dollars for the company. The company should have the opportunity to have some input into material changes in the State's tax policy before they occur which was not the case with the repeal of the exemption for custom computer software.

On behalf of Sprint and the members of the Kansas Tax Coalition, I would respectfully request your support for the exemption for computer software which is embodied in House Bill No. 2322. I would be happy to answer any questions that you may have.

Neal Sharma
Digital Evolution Group, LLC
Overland Park, KS

07 March 2003

I would like to thank the Chair and the committee for once again allowing me to testify on this important issue that has far-reaching implications for the long-term economic vitality of our state.

My name is Neal Sharma, and I am the CEO of Digital Evolution Group, headquartered in Overland Park. Our company is a full-service Internet consultancy. We build Internet-based software, such as web sites, Extranets, Intranets, database applications and other largely web-enabled software on an as-requested, custom basis for companies large and small. As such, our company and our clients are directly affected by the recently passed new sales tax on custom software development.

I speak today as a strong proponent of House Bill 2322. I am in favor of House Bill 2322 not only because a sales tax on technology professional services unfairly and arbitrarily targets a single industry, puts firms like ours at a competitive disadvantage versus those in Missouri and other states, stunts a young and burgeoning segment of our economy, and shifts the tax burden to smaller companies who need custom software development the most in order to compete in today's economy. I am in favor of House Bill 2322 not only because the earlier legislation was passed in the middle of the night with little to no debate essential to the democratic process, and has only a small likelihood that it will consistently generate revenue up to projections. I am in favor of the bill because I believe, after understanding its negative qualities and the manner in which it was passed, to treat the legislation that imposed the sales tax as if it has a high test to pass in order to be repealed is both farcical and terribly devaluing to all of the other laws that were passed after careful and conscientious consideration. Indeed, more time is being spent discussing repealing this legislation than was spent enacting it in the first place.

But the primary reason I support House Bill 2322 and am speaking today, is because I believe taxing more as a method of addressing Kansas' short-term budget woes is counter-productive, short-sighted and damaging to our great state's long-term economic future. By taxing, especially in a manner that is out of step with surrounding states, we compromise the tax base from which we hope to derive revenue from in the future. Or, to borrow an old cliché, we are cutting off our nose to spite our face. If this approach is continued aggressively, there will truly be far fewer of us – businesses or individuals – left to tax.

It is a widely accepted premise that government's primary method of stifling or stimulating an industry is taxation. That is why the policies of this committee are so important and why it is so important to repeal the sales tax on technology professional services. In the next five years, every business, to one degree or another, will be an e-business. In every industry, from agriculture to aeronautics, information technology is key to increasing efficiencies, improving communication flow, reaching out to new markets nationally and abroad, and fostering the innovation necessary to push our economy forward. There are far too many empirical examples of this to mention. So, the last thing we want to do is place obstacles in front of Kansas companies that need to take advantage

of this expertise, or force companies like ours that provide the services to find other states with friendlier environments from which to base our operations. The technology industry employs highly skilled and highly educated employees that are typically paid well and help raise the bar for others in the workforce. Whether it be a farmer, factory worker or company executive, isn't a smarter, more productive, and more stable workforce something we wish to encourage and not discourage for our Kansas graduates? Don't we wish to provide a platform for new businesses to be created rather than not-so-subtly hint that business owners should look elsewhere?

Services are a large, increasing component of the American economy and the lifeblood of places like Johnson County. The high-tech knowledge-based economy is coming upon us with increasing speed every single day, and will happen with or without Kansans. It is my understanding that over the next week, you will be hearing from many people who are opposed to the proposed lifting of sales tax exemptions on a number of professional services. Their arguments include examples from other states where such a measure proved unworkable and will place Kansas at a competitive disadvantage vis-à-vis other states. In support of this opinion, I of course lend my voice and hope that those exemptions are not lifted for all of our sake. But the legislature has already imposed a sales tax on technology professional services, such a crucial industry in today's economy, and for these reasons and all of the reasons suggested today – I urge you to reverse the mistake made in the middle of the night almost a year ago.

As a 26 year-old, I am beginning to enter that phase of life where one makes important decisions regarding where they will settle down, start a family, and live out their life. Because both the western and eastern part of the state have been my home and heart for practically my entire life, I know this great state is the answer for me. As an entrepreneur, I continually make important decisions regarding the vitality and competitiveness of my company. Because of taxation and other policies in Kansas that do not support the growth of technology or new business, my businesses decisions are far more difficult than my personal ones.

So I ask again, why cannot Kansas be a leader in the New Economy? We have many of the right raw materials, an infrastructure, history of success, and positive momentum. All that is missing is the spark of leaders who can make the tough calls in tough times to get the job done. This budget crisis will pass, the real question is what will our state economy look like and be ready for when that day comes.

Thank You.



March 6, 2003

Re: House Bill 2323

Representative John Edmonds, Chairman
and members of the Committee

Affordable Residential Communities ("ARC") has taken the opportunity to review the 2-12 draft of House Bill 2323 concerning taxation. ARC is disappointed to see that in this draft, what was 2 K.S.A. 2002 Supp. 79-3606 (u), exempting from taxation all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days, has been stricken from the bill. This exemption is significant to ARC in that it owns and leases a number of manufactured homes in the State of Kansas, leases which would become subject to taxation if this legislation is passed in its current form.

This is problematic from three perspectives. First, it would create an unfair, competitive disadvantage for owners of manufactured homes versus owners of apartments, town homes and single family houses that lease the same - they would not be subject to taxation for providing the same product. Second, and probably most important, the housing ARC provides is affordable housing, largely used by persons of mid- to lower incomes. If this bill is passed in its current form it will increase the cost of this essential product to them, which leads me to my third point - the cost will ultimately be borne by the consumer, not the owner of the property.

ARC believes that the original draft of this bill, which would exempt leases on manufactured homes, was the fair and proper approach to this issue. ARC would strongly urge that this exemption be reinstated, as this will ensure a level playing field for manufactured rental homes and help preserve the affordability of this type of housing.

Sincerely,

Scott L. Gesell
General Counsel

House Taxation
Attachment 14
Date 3-7-03

Written Testimony Before The House Committee On Taxation

To: Representative John Edmonds, Chairman and Members of the Committee

From: C.D. (Butch) Chance
501 East 63RD North
Park City, KS 67219

Date: March 7, 2003

Chairman Edmonds and Members of the Committee, my name is Butch Chance and I am manager of Chisholm Creek, MHC. I would like to thank you for the opportunity to provide written testimony in opposition to House Bill 2323.

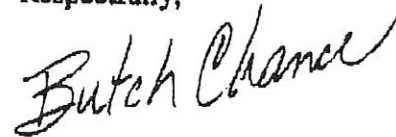
The Manufactured Housing Industry has made great strides in offering a comparable and affordable housing alternative to site built housing. Homes are built to Hud Codes under quality controlled factory conditions. When houses are set on location, it is done according to federal, state, and local codes. These codes make for a safe, quality living style for our friends and neighbors.

These friends and neighbors are hard working people that would like a piece of the American dream. Some are people that have fell on hard times and need a helping hand, an opportunity to achieve a dream of someday owning their own home. We have made this dream obtainable by rent / with the option to purchase agreement. This allows them to build their credit rating, while accumulating a down payment.

There are other people, families that want the opportunity for affordable and quality living conditions. Their current circumstances command renting a home as their only option.

This taxation on only these live styles would be unfair, and I believe not right or justified. I would respectfully request that you oppose the passage of House Bill 2323.

Respectfully,



C.D. (Butch) Chance

Rep. John Edmonds, Chairperson
Committee on Taxation
Kansas House of Representatives
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Rep. Edmonds:

**Re: H.B. 2323
Potential Loss of Sales Tax Exemption for
Self-Service Laundry**

Please allow this letter to serve as notice of the Coin Laundry Association's opposition to **H.B. 2323**, which would remove the exemption from sales tax for self-service laundries in the State of Kansas. The Coin Laundry Association (CLA), a national not-for-profit trade association representing 35,000 laundries in the U.S., supports the position currently being advanced by self-service laundry owners in Kansas.

All self-service laundries in Kansas should remain exempt from sales tax based on several factors:

- 1) Sales Tax on Self-Service Laundry is an Unfair Tax: Operators of self-service laundries pay sales tax upon purchase of their equipment and pay taxes on all utilities provided to customers. They simply make the equipment available to their customers on a self-service basis. Those members of the community who can afford home laundry equipment do not pay sales tax to wash their clothes.
- 2) Sales Tax on Self-Service Laundry is Un-collectable: Over 98% of self-service laundries are equipped to accept payment with quarters only. This makes the collection of this type of tax nearly impossible. The removal of this exemption would essentially result in a gross receipts tax on the small business owners operating laundries.
- 3) Sales Tax on Self-Service Laundry is a Regressive Tax: Self-service laundries serve lower income renters; senior citizens on fixed incomes; students; and others who cannot afford washers and dryers of their own and cannot afford to pay more taxes.
- 4) Sales Tax on Self-Service Laundry is a Tax on a Basic Public Health Service: Self-service laundries provide a basic public health service to the

community. Clean clothes are a necessity, not an optional or luxury service. Those families visiting their local laundry each week rely on these services for the health and safety of their families.

- 5) Sales Tax on Self-Service Laundry is the Exception to the Rule: Only five (5) states assess sales tax on self-service laundry. Removing this exemption would place Kansas among the overwhelming minority of states taxing self-service laundries.

Again, we strongly support your position opposing the passage of H.B. 2323. This bill would have a devastating effect on the dozens of self-service laundry operators in Kansas, as well as the multitude of families relying on our services each week. Please accept our invitation to contact us should you need further information about this critical issue.

Respectfully,



Brian R. Wallace, Executive Director