

Approved: 2/25/94
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Keith Roe at 9:00 a.m. on February 23, 1994 in Room 519-S of the Capitol.

All members were present except: Representative Rock, excused
Representative Welshimer, excused

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

Conferees appearing before the committee:
Representative Clyde Graeber
Pete McGill - McGill & Associates, representing Kansas Military Retirees for Tax Fairness
John Frieden - attorney for Kansas Military Retirees for Tax Fairness
Garvin McDaniels - military retiree
Charles Yunker, Kansas American Legion
Duane Smith - military retiree

Others attending: See attached list

Chairperson Roe opened the hearings on HB 2865, HB 2866, HB 2892 and HB 3042.

HB 2865 - income tax refunds for military retired personnel.
HB 2866 - refundable income tax credit for military retired personnel.
HB 2892 - refundable income tax credit for military retired individuals.
HB 3042 - income tax refunds for military retired personnel.

Representative Clyde Graeber testified in support of income tax refunds for military retired personnel. He said he believes a majority of the members of the Legislature believe sooner or later the state will have to pay, which is only fair (Attachment 1).

Pete McGill, McGill & Associates, representing testified in support of a remedy for what the military retirees believe have been the unfair and illegal tax policies of the State of Kansas. Mr. McGill said most of the other states in this situation have resolved their differences with the retirees and have settled their cases (Attachment 2).

John Frieden, attorney for Kansas Military Retirees for Tax Fairness, testified he supports a legislative solution to rectify past tax discrimination against military retirees. Mr. Frieden reviewed the background of the *Barker v. State of Kansas* case, the efforts made by military retirees to recover the income taxes paid on their retirement, and the situation regarding exhausting administrative remedies. According the Mr. Frieden, more than 19,000 retired veterans and their families have been affected and seek assistance from the Legislature in resolving this matter and he added that they are willing to listen and to negotiate on a settlement (Attachment 3).

Garvin McDaniels, military retiree, testified in support of equitable taxation of military retirees. He said that he and his fellow military retirees have all served honorably in the nation's armed forces for at least twenty years and, in most cases, longer. During their service, they suffered family separations, low pay, and long hours of work without additional compensation (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on February 23, 1994.

Charles Yunker, Kansas American Legion, said they support an equitable settlement regarding the issue of income tax refunds due retired military personnel residing in Kansas but do not support one bill over another. He urged the Committee to work for a fair settlement of refund claims due retired military personnel while not placing too heavy a burden on other taxpayers in too short a period of time (Attachment 5).

Duane Smith, military retiree, testified in support of a fair settlement of the income tax on military retirees. He also said his belief in treating people honestly has been shaken by the handling of this issue (Attachment 6).

John Frieden reappeared before the Committee to respond to questions. He said he is willing to reduce the interest rate from 12% to 5%, payments to be paid out over two years of \$64 million total, and waiver of his fees. He indicated the \$64 million was a recently announced figure. In response to a request by Representative Grotewiel, Mr Frieden submitted copies of letters from the Department of Revenue regarding appeals of taxing military retirement income (Attachment 7).

Written information in support of the above bills was submitted by:

Representative Don Rezac (Attachment 8)

Allen Adams - military retiree (Attachment 9)

Fiscal notes were distributed by the Division of Budget:

HB 2865 (Attachment 10)

HB 2866 (Attachment 11)

HB 2892 (Attachment 12)

HB 3042 (Attachment 13)

Chairperson Roe concluded the hearings on HB 2865, HB 2866, HB 2892, and HB 3042.

The meeting adjourned at 10:45 a.m.

The next meeting is scheduled for February 24, 1994.

HOUSE TAXATION COMMITTEE

DATE 2/23/94

NAME

ADDRESS

REPRESENTING

HAROLD P. RUS	TOPEKA	AARP-CCTF
JIM McBRIDE	TOPEKA	OKS or VER
John Friesen	topeka	KMRTF
Pat McSill	Topeka	KMRTF
KEVIN FOWLER	Topeka	KMRTF
Cletus J. Pottbaum	Wichita	KMRTF TROA
Gileen M. Pottbaum	Wichita	KMRTF TROW
GARVIN McDANIELS	WICHITA	SELF, RETIRED NAVY
MARY LOU McDANIELS	WICHITA	SELF, RETIRED NAVY
John J. Federico	Topeka	McGill + Assoc.
William E. Richards	TOPEKA	RETIRED ARMY
GEORGE FITTEL	TOPEKA	RETIRED AIR FORCE
Hollis B. Logan	TOPEKA	USAF Retired
James R. Riley	Derby	Col USAF (R)
Wilbur H. Weedon	Wichita	Col. USAF (Ret)
Spence Daniel	EDOR Topeka	EDOR
Tom Jordan	Wichita	AARP
Bill Smith	Wichita	AARP
James A. Lock	Wichita	KS77A
Bert McFarland	Overland Park	OP Chamber of Commerce
JOHN WICKHAM	Derby	Ret USAF
MARVIN DRIKEL	Topeka	USAF Ret
Scott Teeken	Topeka	Governor's Office

Testimony- House Taxation Committee
February 23, 1994
Representative Clyde Graeber, Leavenworth

Chairman Roe, Members of the House Taxation Committee

House Bills 2865 and 2866 were introduced as vehicles for the settlement of the improper income taxation of military pensions. HB 2892 and SB 707 are for the same purpose. The sponsors of these bills sincerely hope a resolve of this situation can be made before adjournment of this legislature.

The sponsors all wish to go on record that this issue is a matter of fairness and it is our belief that this committee and the Kansas Legislature should resolve this issue and put Kansas in a position where military retirees feel they are welcome and that this Legislature and our state are not their adversaries.

I feel this is a very clear cut issue, taxes were collected wrongly and Kansas should pay it back. That is only fair.

I know as do all the sponsors of all these pieces of legislation that we are talking about a significant amount of money. There is, however, every indication from the attorneys representing the retirees that a compromise dollar amount can be reached and that the payment of such amount can be made over a three year period.

I believe a majority of the members of the Kansas Legislature believe sooner or later the state will have to pay, interest is currently being added to the amount owed at approximately \$18,000 a day or well over half a million dollars a month.

In any rational view of this situation, sooner or later Kansas will have to pay our veterans, what will the final price tag be, if this legislature

2/23/94
House Taxation Cmte
Attachment 1

doesn't resolve this issue. We can make a settlement and move the issue behind us and show our military retirees Kansas and this Legislature appreciates them and their residency in our state.

I believe we owe our Kansas military retirees fairness and equity. Other states have voluntarily stepped forward and met this challenge and refunded the illegal taxes. I venture to say if any members of this committee found they had paid income tax to Kansas wrongly -- you would not only expect -- you would demand your refund.

Let us as a Legislature do the same. Yes, I know it will be a monetary challenge to our state, but by resolving this and spreading the amount of refunds over a three-year period we can put this matter behind us and show our retired military Kansas wants them, respects them and treats them fairly.

TESTIMONY
OF
PETE MCGILL
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
KANSAS MILITARY RETIREES
FOR TAX FAIRNESS
PRESENTED BEFORE
THE HOUSE
TAXATION COMMITTEE
FEBRUARY 23, 1994
RE: MILITARY RETIREMENT TAXATION

*2/23/94
House Taxation Cmte
Attachment 2*

Mr. Chairman and Members of the Committee, I am Pete McGill of Pete McGill and Associates. I appear here today on behalf of the Kansas Military Retirees for Tax Fairness seeking legislative assistance in providing a remedy for what they believe have been the unfair and illegal tax policies of the State of Kansas.

I have here with me today Retired General Clay Comfort and Retired Colonel Cletus Pottebaum, spokesmen for the military retiree organization to respond to any questions you may have of them along with several other members of their executive committee and interested veterans from all across the State.

This group has been fighting a costly, frustrating and time consuming battle for several years attempting to secure a refund of what they believe are illegal taxes collected by the State on their military pensions.

Encouraged by a large number of legislators and supported by a recent decision of the United States Supreme Court, this group has elected to come to the Legislature seeking your assistance in providing a fair and equitable remedy. Because they have limited knowledge and experience in working with the Legislature, they have asked for the assistance of our firm in helping coordinate their activities as they attempt to work through the legislative process.

I have attended numerous meetings with Legislators including meeting with the Leadership of the House and Senate. There appears to be tremendous support for a legislative resolution of the problem. There are, however, some questions. As you know, I prepared a list of most of the questions that have been asked and presented them in pamphlet form. That was the paper with the blue cover that I distributed to each of you several weeks ago along with answers to all those questions. I prepared the questions, but the answers were all provided by legal counsel for the retirees.

I will not take the time here this morning to review that list as I have invited John Frieden, of Frieden, Haynes & Forbes, here in Topeka, to join with me in sharing with you several concerns he might have. Mr. Frieden is the lead counsel for the military retirees in all their legal activities. I am confident there will be several additional questions by members of the Committee that only he can answer.

If it is your decision to resolve this matter, any of the bills introduced might be used as a vehicle but will have to be substantially modified to accommodate all the legal ramifications for the Legislature, the State, the military retirees and the court.

I have indicated to the retirees that in my opinion, there appeared to be little support for full refunds plus interest. I have been advised by the retirees that they would be more than willing to agree to a reasonable compromise. I have suggested to them that Mr. Frieden be prepared today to tell the Legislature what would be acceptable to the retirees and probably approved by the court.

This issue has always appeared to me to be a question of fairness. Most of the states have resolved their differences with the retirees and have settled their cases. I believe it would be a shame for the State of Kansas to be the last in the nation to live up to its responsibility.

And now, Mr. Chairman, I would like to yield additional time to Mr. Frieden, lead counsel for the retirees, and I will be here to respond to questions.

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**PREPARED TESTIMONY OF JOHN C. FRIEDEN BEFORE
THE HOUSE COMMITTEE ON TAXATION**

February 23, 1994

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear on behalf of the Kansas Military Retirees for Tax Fairness in support of a legislative solution to rectify past tax discrimination against military retirees. More than 19,000 retired veterans and their families have been affected and seek assistance from the Legislature in resolving this matter.

I will take the opportunity this morning to provide you with some background information, answer questions which Mr. McGill has indicated are of concern to some of you, and then address any additional inquiries you might have.

We have been involved with this case since 1989 and serve as lead counsel for the military retirees in the class action filed in Shawnee County District Court. This case (Barker v. State of Kansas) was filed following the United States Supreme Court ruling in Davis v. Michigan Dept. of Treasury, which invalidated state income tax schemes favoring retired state and local government employees over retired federal employees under Title 4, Section 111 of the United States Code and the constitutional doctrine of intergovernmental tax immunity. The

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House Taxation Cmte
Attachment 3

federal statute has been the supreme law of the land since 1939 and the constitutional doctrine has been in effect since 1819.

During the years between 1971 and 1989, retired veterans repeatedly appeared before the Legislature, complaining it was unfair to tax their retirement pay when the State was not taxing federal civil service or state retirement benefits. Despite such efforts, they were unable to obtain equal tax treatment. We estimate that as many as 10-12% of the retirees felt so adamant about the issue that they refused to pay taxes on their retirement benefits. Most retirees paid the tax even though they believed it to be unfair and unlawful.

The Barker class action was filed on behalf of the retired veterans and/or spouses who had been subject to Kansas income taxation since 1984. At the time this case was filed, the statute of limitations was four years. In 1992, the statute was reduced to three years.

As the attorneys for the retirees, we were fully aware that one of the first principle issues before the court would be whether the retirees were required to exhaust their administrative remedies before first seeking relief in a court of law. This was an issue everyone wanted resolved as soon as possible because if they needed to exhaust administrative remedies, they needed to do so before the statute of limitation expired.

The Shawnee County District Court, for a variety of reasons, ruled in December 1989 that the retirees did not need to exhaust their administrative remedies because the remedies were "futile and inadequate" and that full relief, including refunds, could be obtained in the class action. The court also certified

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the case as a non-opt-out class action, which basically means that every person in the class is automatically included. A non-opt-out class differs from the other type of a class permitted under Kansas law (opt-out) inasmuch as in an opt-out class, class members are provided with a notice giving them the right, if they so desire, to opt-out of the class. Many of the federal retiree class actions filed throughout the United States have been non-opt-out classes.

Following the ruling that the retirees did not need to exhaust their administrative remedies, we urged many retirees to nevertheless proceed to file requests for refunds with the Director of Taxation because of the possibility of an appeal being made by the State on that issue to the Supreme Court of Kansas. Unfortunately, at that time we did not have access to a list of class members so we were limited in communicating with our clients.

The Department of Revenue, however, subsequently began sending letters to retirees advising them that it was not necessary for them to exhaust their administrative remedies because the court had said that they could obtain refunds in the class action instead. In other words, the Department advised retirees that it was unnecessary for them to go through the administrative process in light of the district court's previous determination.

Following the Davis decision in 1989, virtually all states which had taxed federal retirement pay and exempted state retirement pay enacted corrective legislation to provide for equal tax treatment. Kansas was the only state that did not voluntarily comply with the mandate of equal tax treatment.

As you know, in 1990 the Shawnee County District Court ruled that the discriminatory tax was not illegal. We appealed that decision to the Kansas Supreme Court and lost in a unanimous decision. The State, however, did not appeal from the district court's determinations that class members were not required to exhaust administrative remedies and that their refund rights had been preserved in the class action. Following the Kansas Supreme Court's decision in the Barker case, we appealed to the Supreme Court of the United States and won in a unanimous decision. Essentially, the United States Supreme Court ruled that differential taxation of military retirement pay violated the nondiscrimination clause of 4 U.S.C. § 111 and remanded the case for appropriate remedial action. The Kansas Legislature then finally passed corrective legislation in the form of Senate Bill No. 215 (1992), but did not make it effective for any year before 1992.

The case then came back to the Kansas courts where the retirees thought that since the United States Supreme Court had said the tax had been assessed illegally, they would get refunds. While we asked the district court to quickly resolve the refund question, it decided to postpone consideration of this matter until the United States Supreme Court announced its decision in the pending case of Harper v. Virginia Department of Taxation. As part of its strategy to avoid or reduce potential refund liability, however, the Department of Revenue meanwhile changed its position that the retirees could get their refunds in the class action and filed a motion to reconsider the exhaustion issue. In addition, the Department requested the court to decertify the class.

These motions were filed in December of 1992. We urged the court to rule on all the issues but at least rule on the motion for reconsideration of whether or not the retirees were required to exhaust their administrative remedies. The Department, trying to delay the case as long as possible in the hope that claims would become barred under the new three-year statute of limitation, urged the court to defer ruling on the issue of refunds until the case of Harper v. Virginia was decided by the United States Supreme Court. That case, involving both federal military and civilian retirees, presented the issue of whether states courts could refuse to give full retroactive effect to decisions of the United States Supreme Court which had already been retroactively applied as a matter of federal law. This was not a new issue since the United States Supreme Court had addressed the question on numerous prior occasions. However, at the request of the Department's attorneys, the district court refused to rule on any of the issues, including the refund question, until Harper was decided.

On June 18, 1993, the United States Supreme Court announced its decision in Harper and essentially followed existing precedent which required that Davis v. Michigan Department of Treasury be given retroactive effect (i.e., the 1989 decision applies to refund claims for taxes paid in years before 1989). The case was remanded to the Virginia courts to resolve questions of state law which could impact the scope and form of relief required under the United States Constitution. Basically, the Supreme Court in Harper ruled that since its decisions should be given retroactive effect, federal military and civilian retirees are entitled to full refunds or other meaningful backward-looking relief unless the state had provided them with fair and adequate predeprivation remedies. A fair and meaningful predeprivation

remedy is one which would have given retirees the right to withhold payment of the tax while challenging its legality without the threat of financial sanctions or summary remedies. The court further said that a state does not provide such a remedy when the risk of potential financial sanctions places taxpayers who withhold payment at a serious disadvantage in the assertion of their legal rights. Other courts which have considered the issue have also concluded that interest on underpayments [Kansas -- 18% per year -- K.S.A. 79-3228(a) and (b); K.S.A. 79-2968], penalties [Kansas -- 25% after 60 days -- K.S.A. 79-3228(b)] and the possibility of summary enforcement mechanisms such as tax warrants, liens and seizures of property [K.S.A. 79-3235].

The Department of Revenue took the position that Kansas had an injunction statute [K.S.A. 60-907(a)] which gave retired veterans the right to withhold payment of the state income tax and contest its validity. The Department also argued that the administrative process provided a similar prepayment remedy. It is interesting that the District Court of Shawnee County recently ruled that the injunction statute was not applicable and did not provide retired veterans retirees with an available remedy. Given the absence of any remedy which authorizes military retirees to refuse payment without the risk of significant financial sanctions and summary remedies for collection, they should receive their refunds.

On December 17, 1993, at the Department's urging the District Court of Shawnee County reversed its ruling on exhaustion of administrative remedies and held that, despite its previous determinations, the retirees are required to exhaust the long and complicated administrative process to assert their refund claims. The court made no mention of the fact that the Department of Revenue had previously advised retirees it was not necessary for

them to exhaust the administrative process and intends to oppose the refund claims of retirees who took the Department at its word.

This essentially left 19,000 people wondering what they should do. It appeared to us that approximately 18% of the retirees had filed either a request for refund or amended tax returns and of that percentage, most of those individuals had either not filed for all the years involved or had not responded to the denial of the request for refunds and the Department had dismissed these requests. These taxpayers who have thus far done little or nothing to independently press their refund claims cannot be faulted for relying upon the existence of the Barker class action, the previous determinations of the district court, and the representations of the Department of Revenue which clearly led them to believe that pursuit or exhaustion of the administrative process was not required to obtain refunds.

For those retirees who have been lucky enough to clear each of the administrative hurdles in their path, it is indeed shocking that the Department now contends in the administrative process that the refund remedy does not apply to income taxes collected in violation of federal law. Although the district court recently accepted the Department's argument that the Kansas income tax scheme provides retirees with a full and adequate administrative refund remedy, the retirees currently pursuing that remedy are being told by the Department that it does not apply.

In the meantime, we obtained a list of most of the names of the retirees and sent them letters advising them of what has occurred.

The Kansas Military Retirees for Tax Fairness has met on numerous occasions and decided to pursue two primary courses of action to complement the pending Barker class action:

(1) Attempt to obtain a Legislative resolution. Since 19 states had settled or were close to settlement, it appeared to be reasonable that the State of Kansas might consider that as a matter of fairness, this action should be resolved; and

(2) Attempt to assist the retired military community in asserting and protecting their rights through the complicated administrative process and, if necessary, back into the Kansas courts.

During December 1993, the District Court of Shawnee County had not yet ruled on a pending motion to issue a permanent injunction against the State to prevent any further efforts to collect, assess or enforce income taxes against those retirees that did not pay taxes on their retirement benefits for the years 1984 through 1991. When the Department specifically responded to this request in January 1994, the State threw in the towel on that issue and agreed that they could not collect taxes from retirees who did not pay taxes during those years because to do so would be unlawful. The irony, of course, is that those individuals who refused to pay the taxes because they thought it was unfair and unlawful have now been provided relief, but the retired veterans who paid taxes as required by Kansas law are now suffering the consequences.

At 10:00 a.m. yesterday morning, the Supreme Court of the United States accepted certiorari in a case from the State of Georgia in which the question of adequate predeprivation remedies

is squarely presented. The court announced yesterday that it had denied 120 requests for review and accepted only 4. The prevailing view is that the Supreme Court is tired of states ignoring their clear decisions.

Mr. McGill has indicated to me that in his discussions with many of you, you have posed a number of questions which I intend to address at this point.

WHAT STATES HAVE ALREADY SETTLED WITH THE VETERANS OF THEIR STATE?

Thus far, 19 states have either been ordered to pay refunds, have agreed to pay refunds or are close to reaching such agreements: Missouri, Colorado, Oklahoma, Iowa, Michigan, Montana, Utah, Oregon, Arizona, New Mexico, Arkansas, Kentucky, West Virginia, Louisiana, South Carolina, Alabama, Mississippi, Wisconsin and West Virginia.

HOW MANY KANSAS VETERANS ARE IMPACTED BY THE CLASS ACTION LAWSUIT FOR REFUNDS?

Our information is that 21,000 veterans are involved, several thousand of whom have passed away and moved to other states during the past several years. However, it would appear that perhaps 10 to 12 percent of retired veterans did not pay state income tax on their retirement benefits. Consequently, approximately 19,000 retired veterans and their families are directly affected by the tax refund issue. We do not believe the Department seriously disputes these estimates.

DOES THE LEGISLATURE HAVE AUTHORITY TO RESOLVE THE ISSUES?

Yes. As I indicated, there is presently a non-opt-out class action pending in the Shawnee County District Court. I am told by Mr. McGill and numerous members of the Legislature that there is very little support for full payment of refunds plus 12% interest. As I have indicated to you, we are extremely interested in resolving this matter by agreement and will discuss any sensible resolution. We understand that you have budgetary concerns and we are willing to work with you to minimize any adverse effect this settlement would have on the people of Kansas.

IF THE LEGISLATURE CREATES AN ACCEPTABLE SOLUTION WHICH IS APPROVED BY THE COURT, WILL THIS BIND ALL THOSE ELIGIBLE RETIREES?

Yes. The class action which is pending in the Shawnee County District Court has been certified under the rules of procedure and includes the 19,000 effected individuals. Under the Kansas class action statute, any judgment extends by its terms to all class members and the court is empowered to approve any compromise agreement deemed to be in the best interest of the class. If the Legislature created an acceptable solution, we would take the compromise to the court and request the court to approve it as being fair and reasonable. The court would provide notice to the 19,000 individuals and permit them, either individually or through their attorneys to appear and either support or testify in opposition to the proposed settlement. After hearing the testimony, if the court believes the settlement is fair and equitable, the settlement will be approved and be fully binding on all 19,000 retired veterans. Similar settlements

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have already been approved by courts in Arkansas, Alabama and Louisiana without difficulty.

**HOW ARE THE ATTORNEYS FOR THE RETIREES COMPENSATION?
WILL THEY RECEIVE A GUARANTEED PERCENTAGE OF ANY SETTLEMENT?**

Upon successful conclusion of the class action lawsuit, the attorneys representing the retirees will submit an application to the court requesting a fair and reasonable award of attorney fees which will be equitably spread among those who benefit from any recovery.

For your further information, an application for an award of attorney fees against the State has been pending in the class action lawsuit since late 1992 and will not be decided by the district court until the case is resolved by appeal or settlement. Any attorney fees the retirees may be required to pay would be reduced on a equitable basis by the amount of any attorney fees the State is required to pay. If an acceptable settlement can be reached, the retirees have indicated they would be agreeable to waiving any attorney fees against the State.

WHAT IS THE MAXIMUM POTENTIAL LIABILITY TO THE STATE?

The Department of Revenue's most recent estimate is between \$81 and \$85 million. Interest is accruing at the rate of \$17,424 per day and a delay of two more years of litigation will mean an exposure of approximately \$100 million.

**WHAT IS THE DOLLAR AMOUNT AND PERCENTAGE THE RETIREES
ARE WILLING TO ACCEPT IN SETTLEMENT?**

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If a Legislative resolution can be accomplished, the retirees are willing to reduce the interest rate from 12% to 5% and, according to our calculations as of February 28, 1994, the assumed interest and tax refunds would total \$64,340,805. It is this figure which the retirees are willing to accept as a reasonable settlement. The retirees are further willing to permit payment over a two year period if the Legislature believes it is necessary. The attorneys for the retirees are likewise willing to waive any attorney's fees the court might award them under the provisions of 42 U.S.C. § 1988. The settlement will be administered jointly by the State and the retirees under the court's jurisdiction.

THE RETIREES HAVE RECENTLY RECEIVED LETTERS URGING THEM TO EXHAUST THEIR ADMINISTRATIVE REMEDIES AND REQUESTING PAYMENT OF \$75 FOR ENLISTED AND \$150 FOR OFFICER RETIREES. WHAT IS THE REQUEST FOR FUNDS FOR AND WHY IS IT NECESSARY?

The retirees fully intend to appeal the Shawnee County District Court requiring them to pursue administrative remedies. They are also attempting to extend the statute of limitations which would permit the retirees additional time in which to file claims for the years 1984 through 1991. Of course, the statute would not have to be extended if the Supreme Court of Kansas ruled that the court erred in ordering the retirees to utilize the administrative process. On the other hand, should the retirees lose on appeal to the Kansas Supreme Court and the United States Supreme Court such that the statute of limitations has not been tolled, the only potential relief available for retired veterans would be through perfected claims and appeals through the administrative process. Because April 15th is rapidly approaching and there is no guarantee of what will happen on appeal, it was

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the judgment of the Kansas Committee on Tax Fairness to attempt to assist as many retirees as possible in properly pursuing and exhausting the administrative process to help them get back the money illegally exacted from them. The amount of money requested from the retirees was arrived at by determining the costs associated with a variety of administrative expenses, such as printing, mailing, amending eight years of tax returns for most of the retirees, copying costs, and compiling a record for appeal to the Board of Tax Appeals and the courts. If in the unlikely event any sums are left unused, then it is hoped that payment could be made to defray some administrative costs.

CONCLUSION

We have always believed that the question at issue here had more to do with fairness than it did with application of legal principles. For a great number of years the military retirees attempted to get the State to do what was fair and equitable. The Supreme Court of the United States has clearly stated that they should not have been made to pay the tax. The retirees who refused to pay the tax received the benefit of the Supreme Court decision but for those that paid the tax and used the court system refund relief has been denied. Is it fair for the State to send the retirees through the difficult process of administrative appeals only to end up back in court years later trying to get their money back? Is it fair for the Department of Revenue to have misled these people by telling them they did not need to exhaust administrative remedies and then get the court to order them to exhaust? Is it fair to not pay back taxes which were illegally taken from the retirees? If the tables were turned, would the State forgive a taxpayer from back taxes, penalties and interest if the taxpayer misinterpreted the law?

3-13

At a House Federal and State Affairs Committee meeting a few weeks ago, counsel for the Department of Revenue made a presentation. The committee chairman asked counsel whether or not it was fair to refuse to give these retirees back the money that was illegally taken from them. The Department's counsel responded that fairness is not an issue of concern to state taxing officials. I take the greatest exception to this response. We respectfully submit that every Kansas citizen has the right to be treated fairly by its government and that includes these retirees, many of whom fought and suffered injuries to protect the fundamental rights of our citizens. A just government cannot in good conscience illegally take money from its citizens and refuse to return it.

We would sincerely request the Legislature to resolve this issue in a fair and equitable manner.

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Testimony before the Kansas State House of Representatives, Committee on Taxation, February 23, 1994, by Garvin B. McDaniels, Chief Petty Officer, U.S. Navy, Retired

Good morning Chairman Roe and members of the Committee. On behalf of myself and 17,000 military retirees in the state of Kansas, I wish to express my appreciation for being allowed to testify before this committee in support of House Bill No. 3042 and to be a spokesperson for the equitable taxation of those retirees.

I, and my fellow military retirees, have all served honorably in our nation's armed forces for at least twenty years and, in most cases, longer. During our service we were assigned to arduous and dangerous stations worldwide, suffering family separations, low pay, and long hours of work without additional compensation. None of us served for monetary gain. We all served out of a sense of duty towards our country.

Military careerists form the backbone, the cadre, of the armed forces. We were trained to train others; we were trained to lead others; we were trained to place the welfare of our subordinates above our personal welfare and safety and we pledged our lives and honor towards the preservation of the United States and its ideals.

Duty is a term which has eroded in meaning, but for us duty remains a most sacred concept. Duty is a concept both real and unflinching. It is this absolute sense of duty which entailed sacrifice and danger that compelled us to serve.

I cannot review the service of all Kansas military retirees, but I can review mine as an example. I served in the Army from 1963 to 1970 and during that period I spent five years overseas: 3 years in Europe and almost 2 years in Vietnam. I was awarded three Purple Hearts, the Vietnam Service Medal, the Vietnam Campaign Medal, the Presidential Unit Citation, the Meritorious Unit Citation, the Bronze Star and the Good Conduct Medal. I had a brief experience with civilian life during which job opportunities for veterans were severely limited and I joined the Navy in 1972. My naval career included assignments to Diego Garcia--a small island in the Indian Ocean--Guam, Europe and other overseas stations. Again, my service was credible.

Never once in my career did I consider that, as a serviceman, I was entitled to munificent compensation. Physical and emotional exhaustion, loneliness and alienation by our civilian brethren were all part and parcel of military service. For this I earned \$78 per month as a private in 1964. It was not until 1985 that my base pay exceeded \$1000 per month. The federal committee on military compensation has published data which justifies low active duty military pay by stating that we are contributing to our retirement, not through payroll deductions, but by compensation not on parity with our civilian counterparts.

So far, I have addressed emotional elements of our argument. I want to turn now to the legal history involved. The United States Supreme Court ruled in Davis v. Michigan that if a state exempted retired state employees income from taxation, then federal civilian retired employees income must be likewise exempted. Kansas military

2/23/94
House Taxation Cmte
Attachment 4

retirees considered our retired pay to fall within the same parameters of the Davis case and, after seeking administrative and legislative relief, filed a class action suit, Barker v. Kansas. After rulings adverse to our cause by the Shawnee County District Court and the Kansas State Supreme Court, the United States Supreme Court granted a writ of certiorari to hear arguments in the case. The United States Supreme Court, in a unanimous decision, ruled that military retirees are indeed in the same class of taxpayers as state and federal civilian employee retirees. Barker v. Kansas was remanded to the Court of original jurisdiction for relief. The Shawnee County District Court judge decided to see how the U.S. Supreme Court would rule on Harper v. Virginia before issuing a ruling on whether military retirees should receive refunds for taxes illegally collected.

Now, the Shawnee County District judge has decided that military retirees must exhaust administrative remedies before the courts get involved again.

I have submitted amended tax returns for tax years 1987 through 1991. For my efforts at administrative remedy, I received a form letter from the Secretary of Revenue which stated that, in his opinion, military retiree pensions are not exempt from taxation. I appealed according to law and was assigned a docket number, but I have not been scheduled for a hearing. This has been over seven months ago. The administrative process is not working. I have concluded that the Director of Taxation has no intention of issuing refunds to us.

Our Constitution and the laws made in pursuance thereof are the supreme laws of the land. This fundamental tenet of federalism was reiterated in McCullough v. Maryland in 1819 by John Marshall. Marshall wrote, "But this question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states, shall take the oath of fidelity to it." Just as state and local governments complied with integration laws laid down by Brown v. Topeka Board of Education, Kansas should comply with Barker v. Kansas and Harper v. Virginia.

Representative Graeber has now revealed that the Department of Revenue will not seek to collect taxes withheld by a number of military retirees who neglected to declare their pensions as income prior to the Barker decision and the amendment of tax codes by the legislature to exempt those pensions. If I violated the tax laws, illegal though those laws were, in 1987, 1988, 1989, 1990 and 1991, I will be rewarded now, but, since I obeyed the tax laws during that period, I am now being penalized.

The men and women who liberated Europe and subdued Imperial Japan in WWII, who arrested Communism on the Korean peninsula, who fought a tenacious and vicious enemy in Vietnam, who rescued American citizens on Grenada, who stopped a madman in Kuwait, and who served honestly, honorably and diligently throughout the world to protect this democracy and way of life only ask that they receive equitable

treatment by the tax collector. Nothing more; nothing less.

The very democracy that we gave our full measure of devotion to defend now has a chance to show political courage. Time and again I saw displayed on the battlefield extraordinary courage by those in uniform. The legislature now has a chance to display extraordinary courage by the application of law. It will be admired by those who gave definition to the word courage.

Thank you for your time and attention.

HOUSE TAXATION COMMITTEE
TESTIMONY BY CHARLES M. YUNKER, ADJUTANT
KANSAS AMERICAN LEGION
ON HOUSE BILLS 2865, 2866, 2892 AND 3042
WEDNESDAY, FEBRUARY 23, 1994

On behalf of the more than 90,000 members of The Kansas American Legion, American Legion Auxiliary and Sons of The American Legion, I sincerely appreciate the opportunity to testify today in favor of an equitable settlement regarding the issue of income tax refunds due retired military personnel residing in Kansas.

Several years ago when the unfair taxation of military retirement pay became an issue in Kansas, the Legislature was, in my opinion, misled by representatives of the Kansas Department of Revenue. Whether or not the misleading information furnished to the Legislature was by design or merely a lack of understanding on the part of the Department of Revenue, I do not know. Example: One of the first arguments Legislators were told was "Military retirees received huge discounts by shopping at Commissaries located at military installations." Fact: While military personnel can shop at such facilities not all do unless they reside nearby the military installation. The majority do not live nearby; but the most erroneous part of the previous statement is that "huge" discounts simply do not exist. The day of cheap food, clothing, etc. purchased at military installations ended more than twenty years ago when the federal government turned over the operation of such facilities to the civilian sector. Today, local discount stores and large food chains offer much better pricing. Even if such discounts still existed that is a separate issue and has nothing to do with taxation.

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When bills were introduced in the Legislature several years ago to end the unfair taxation of military retirement pay, the overriding message from the retirees was 'stop unfairly taxing us and we'll forget about refunds.' 'But if we have to go to court to make our point, we'll want our refunds.' Nothing more could have been asked of the retirees; after all, they were merely asking to be treated the same as all other federal retirees and were willing to forget the past.

Unfortunately the retirees pleas for fairness went unheeded. Who is to blame?

Now is not the time to point fingers; now is the time for the Legislature to act in the responsible manner for which it is known. The American Legion is not in favor of one bill over the other; HB 2865 over 2866; or 2892 over 3042; or even SB 707 over any of the House Bills.

From the beginning of this entire issue The American Legion has been in favor of equitable treatment. Now is the time for a just and fair settlement regarding refunds to military retirees.

I urge you to work for a fair settlement of refund claims due retired military personnel which is acceptable to the majority of those due refunds while not placing too heavy of a burden on other taxpayers in too short a period of time. Continued court battles will only serve to waste more precious tax dollars which should have been, and can still be, used to fund needed services to all citizens of Kansas.

Duane R. Smith
Burlington, Kansas

My name is Duane Smith. I live in Burlington, Kansas. I am a 20 year U. S. Navy veteran of the Vietnam War era. Unlike many who will testify here today, I do not claim to represent a large group of people. I came because I wanted to personally tell you what I am thinking. In that regard, you could say that I represent the average military retiree. At least I believe that my thoughts are in consonance with them.

I was brought up believing that if I treated other people honestly, they would treat me the same way. I must say that this belief has been shaken by the handling of this issue of income tax on the retirement pay of the military retiree. After the District Court of Shawnee County handed down the ruling on December 17 of last year, I heard a news report that one of your distinguished colleagues declared that since the legislature did not now have to worry about refunding this money, this session would be much easier. I do not see it that way. I worked hard for that money. The U. S. Supreme Court ruled that in all cases still open on direct review, every court must give full retroactive effect to its decision in *Harper v. Virginia Department of Taxation*; that the income tax had to be refunded. This means that the State of Kansas owes me a refund. It seems to me that failure to provide me with a full refund is the same as stealing my money.

Unless I am greatly misled, the District Court of Shawnee County ruled last December 17 that the military retirees had to exhaust their administrative remedies before the Court could take up the matter. (They did not rule that the State of Kansas could avoid paying this refund.) This meant that each person had to go through the appeals process. This is a process that I have started. I am attaching a copy of the letter I received from the Kansas Department of Revenue concerning that effort. It says that "*neither the Supreme Court nor the Kansas Legislature has directed the state to refund taxes paid on military retirement benefits in years prior to 1992.*" They cannot refund my money! With that attitude, the appeals process is a dead end. That is why you find many military retirees interested in the outcome of this legislation.

It should be noted that when this legal action was beginning, on December 19, 1989, that same court ruled "*military retirees were not required to pursue or exhaust futile and inadequate administrative refund remedies within the Kansas Department of Revenue or Board of Tax Appeals.*" The court's December 19, 1989, ruling seems clear. It told military retirees, like me, to not bother with the normal channels for tax relief. It said that we did not have to submit a claim in 1989 for any tax refund. This case would take care of us all. I believed that this ruling took this matter out of the hands of the State of Kansas so that only the courts would provide justice. I understood that I would be covered back to 1984 without taking any further action. As I said above, I believe that I represent the average retiree's thinking. We all felt that the statute of limitations had been waived by the court's ruling that "*military retirees were not required to pursue or exhaust futile and inadequate administrative refund remedies...*" I urge you gentlemen to read the December 19, 1989, ruling. You need to read it in order to understand how we got to this committee hearing.

Now I am told that I was a fool. I am told that I have to exhaust the administrative remedies. I am told that these administrative remedies have a statute of limitations and that it does apply in my case. I am told that if I did not apply for a refund back in 1989, I can kiss it good-bye. Not only that, but the legislature passed a law in the mean time that shortened that statute of limitations. This does not seem fair nor just. However, I am somewhat better off than some military retirees because I filed for my refund in 1992, after the U. S. Supreme Court ruling in *Barker v. Kansas*. If the current statute of limitations applies, I will be eligible for a refund for only 1989, 1990 and 1991; I will lose any claim to the years before 1989. Yet in 1989, the District Court of Shawnee County told me that I did not have "*to pursue . . . administrative . . . remedies.*" I feel as if I have been stabbed in the back and had many thousands of dollars of my money stolen from me.

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It seems to me that illegally taxing a person on an income stream is the exact opposite of that person avoiding such payment by not reporting that income stream. If I fail to report taxable income, no statute of limitations applies. I will be liable for that tax forever. The same should apply when the State of Kansas illegally taxes the income of the military retirees. There should be no statute of limitations in this case. I appeal to you to treat us as you would want to be treated if the shoe was on the other foot. Refund it all back to 1984, which was the start date under consideration on December 19, 1989.

I received a letter from the lawyers that have been handling this lawsuit from the beginning. They say that they will be entitled to a percentage of my refund because they brought a class action lawsuit. I think they are correct. Somehow, I do not believe that I should have to shoulder this burden. I do not believe that I should have to pay for having to hire a lawyer to obtain what was lawfully mine in the first place. I never have understood that concept! If it is possible, I would ask you gentlemen to provide the lawyer's compensation in addition to the military retiree's income tax refund.

One final note. I read in Monday's Wichita paper that there are some military retirees that intentionally omitted the military retirement income from their Kansas State Income Tax forms so that they never paid tax on it in the first place. They violated the law! A law that has no statute of limitations! The newspaper states further that the State of Kansas is going to let them get away with it! Think about it. Is it fair for them to break the law and keep their money; and me to follow the law and lose mine? No, that is not fair! Please give us a fair settlement.

Thank you.

KANSAS DEPARTMENT OF REVENUE
Division of Taxation
Robert B. Docking State Office Building
Topeka, Kansas 66625-0001
(913) 296-7000

December 15, 1993

SMITH, DUANE R & LOIS I
1455 HIGHWAY 75
BURLINGTON KS 66839

SS#: 515-34-6543
SER#: 5-4-1338799
6-5-1297807
7-6-1125323
8-7-1526324
PFS#: 2M

You have filed a refund claim for Kansas income taxes paid on military retirement benefits. In response to a 1992 ruling by the United States Supreme Court, the Kansas Legislature amended state law to exempt military retirement benefits from Kansas income tax beginning in the 1992 tax year. However, neither the Supreme Court nor the Kansas Legislature has directed the state to refund taxes paid on military retirement benefits in years prior to 1992. Accordingly, your refund claim is hereby denied.

If you feel aggrieved by the denial of your refund claim you may appeal by filing a written request for a hearing with the Director of Taxation, Kansas Department of Revenue, Topeka, Kansas 66625-0001. The request for hearing must specifically set forth your objection to the above ruling and the relief you desire. The request for hearing must be filed within sixty (60) days of the mailing of this notice.

INCOME AND INHERITANCE TAX BUREAU
FAIR SHARE UNIT



BY: Bob Clelland

FOR THE DIRECTOR OF TAXATION

6-3



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1538

November 6, 1990

Patricia A. Craft
8848 Evanston Way
Kansas City, MO 64138

RE: Kansas Income Tax Appeal
Docket No. 89-M1487

Dear Mrs. Craft:

Your letter dated October 18, 1990, requests information on the status of your late husband's appeal involving a claim for refund of Kansas income tax paid on military retirement benefits.

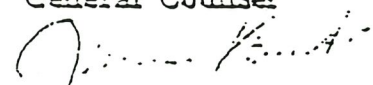
Please be advised there is a class action lawsuit currently in progress that has been brought on behalf of all Kansas military retirees and their spouses. This lawsuit will resolve the issue of whether the state of Kansas can tax military retired pay. A district court judge in Topeka recently ruled that the tax is valid and military retirees are not entitled to refunds. However, that decision is being appealed and a higher court will consider this issue some time next year.

The Department of Revenue will schedule your appeal for a hearing before the Director of Taxation if you wish to have a hearing. However, it has already been decided by the district judge that taxpayers are not required to have administrative hearings and may seek to obtain refunds in the class action lawsuit instead.

We hope this provides the information you requested. Please feel free to contact our office if you have any questions.

Respectfully,

Mark A. Burghart
General Counsel


James Bartle, Attorney
Legal Services Bureau
Kansas Department of Revenue
Docking State Office Building
Topeka, KS 66612-1538
(913) 296-2381

MAB:JB:dw
cc: Ardina Herrera

General Information (913) 296-1909
Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381
Audit Services Bureau (913) 296-7713 • Planning & Research Services Bureau (913) 296-3031
Administrative Services Bureau (913) 296-2331 • Information Services Bureau (913) 296-3077

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11

KANSAS DEPARTMENT OF REVENUE
Division of Taxation
Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

September 27, 1991

Call Jettison (313) 688-276

BILLINGER JR., MAX W. & JEAN H.
12721 E. BIRCHWOOD
WICHITA KS 67206

RE: Military Retirement Appeal
Refund Denial Date: 8-26-91
Social Sec. Number: 511-03-8087
Docket Number: 91-M0227

Please be advised that your petition for a hearing before the Director of Taxation concerning the taxation of Military Retirement Benefits has been received and docketed by this office. This docket number applies to the appeal of your recent refund denial.

There is a class action lawsuit currently in progress that has been brought on behalf of all Kansas military retirees and their spouses. This lawsuit will resolve the issue of whether the state of Kansas can tax military retired pay. A district court judge in Topeka ruled October 31, 1990, the tax is valid and military retirees are not entitled to refunds. That decision was appealed to the Kansas Supreme Court where again the Court ruled July 12, 1991, the tax was valid and military retirees were not entitled to refunds. We anticipate that the decision from the Kansas Supreme Court will be appealed to the U.S. Supreme Court in the near future.

The Department of Revenue will schedule your appeal for a hearing before the Director of Taxation if you wish to have a hearing. However, it has already been decided by the district judge that taxpayers are not required to have administrative hearings and may seek to obtain refunds in the class action lawsuit instead.

Point of contact for this petition is Kathleen M. Smith, Problem Resolution Officer, Director of Taxation's Office, Kansas Department of Revenue, Topeka, Kansas, 66625-0001, (913) 296-3059.

Every military retiree who has requested a hearing before the Director of Taxation may appear in person or be represented by an attorney admitted to practice before the Courts of this state as provided by Kansas Statutes Annotated 7-104. Said hearing will commence and be conducted in accordance with the statutory requirements of an Administrative Proceeding as provided for in the Kansas Administrative Procedure Act, Kansas Statutes Annotated 77-501 et. seq.

Sincerely,



Alisa M. Dotson
Director of Taxation

DON M. REZAC

REPRESENTATIVE, SIXTY-FIRST DISTRICT

WABAUNSEE & PARTS OF POTTAWATOMIE COUNTIES

(913) 535-2961



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: KANSAS PUBLIC EMPLOYEE
RETIREMENT STUDY COMMISSION
RANKING MINORITY MEMBER: AGRICULTURE
MEMBER: ENERGY AND NATURAL RESOURCES
TRANSPORTATION

TESTIMONY ON HB 2866 and 2892
HOUSE TAXATION COMMITTEE
February 23, 1994

Mr. Chairman and members of the committee:

I am Representative Don Rezac from District #61. I would like to testify in favor of HB 2866 and 2892, which deal with refundable income tax credit for military retired personnel.

I think the idea is strictly in fairness, if the state collected taxes unconstitutionally they should be refunded. I do have several military retirees in my area who have talked to me. A few would like to have the refund plus interest, but the majority of the people that have talked to me say they would just like to get the return of their money.

It would seem the most sensible way to do this would be in a tax credit to be used on their future returns, with a specified number of years.

I will be happy to answer any questions.

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February 23, 1994

Members of the Taxation Committee:

My name is Allen Adams. I served thirty (30) years active and reserve in the Air Force. I have paid Kansas taxes on my military pay from 1980 through and including 1991.

After reading the U. S. Supreme Court ruling in Davis vs Michigan (1989) I realized that taxation of military retired pay was illegal and I filed amended tax returns for my retired pay that was illegally taxed for the years 1984-1987. I have filed an amended return every year through 1991. Each time I filed an amended return I received a letter from the Director of Taxation requesting whether I wanted a hearing. I always responded that it would probably be fruitless until the final decision was made. On July 28, 1993 I specifically requested a hearing with no response from the Director. So I have followed the administrative procedure with no results.

The decision in Harper vs Virginia clarified Davis vs Michigan by stating that refunds on past taxes are refundable to the limits of the Statute of Limitations on filing such returns.

The Kansas State attorneys may tell you they can further stall a decision on this problem. It can bounce around from Judge Allen's court to the Kansas Supreme Court and perhaps to the U. S. Supreme Court again. In the meantime the interest charges and the litigation charges continue to accrue.

Some of you may not have any or no military retirees in your district. However you took an oath to the U. S. Constitution and the Kansas Constitution to uphold the laws thereunder. The U. S. Supreme Court has spoken twice on this issue.

Since the State of Kansas has used my taxes on retired pay from 1980 on I feel that H. B. 2865 is the most appropriate action.

Thank you,

Allen Adams

Allen Adams
8906 Birch Lane
Prairie Village,
Kansas 66207

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SEP 13 1991

Mr. Bob Clelland:

Dear Sir:

I feel any hearing on this matter at the moment would be fruitless.

However, I do reserve the right to appeal your decision if subsequent litigation should grant us relief.

Advise if this is agreeable.

Yours truly
Allen D. Adams

ALLEN D. ADAMS
8906 BIRCH LANE
PRAIRIE VILLAGE, KS.
66207-2212

8-3-92

They did not advise.

MEMORANDUM

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: February 21, 1994

FROM: Kansas Department of Revenue

RE: House Bill 2865
As Introduced

BRIEF OF BILL:

House Bill 2865, as introduced, is new legislation providing a refund of income tax paid by a qualified individual for the years 1984 through 1991, for tax paid on military retirement benefits. The bill also makes provision for refunds due to deceased taxpayers.

The effective date of this bill would be July 1, 1994.

FISCAL IMPACT:

Passage of this bill could reduce fiscal year 1995 general fund revenues by about \$91.6 million.

Based on figures from the department of defense for benefits paid to Kansas retirees from 1984 through 1991, and making two assumptions; 1) reducing the total pension amount by an estimated non-compliance percentage for each tax year, and 2) assuming an average tax rate in effect during those years. Interest is calculated at 12% per year through July 1, 1994. The potential impact could be about \$91.6 million in fiscal year 1995.

Military Pensions by Tax Year Potential Fiscal Impact Less Non-Compliance

Dollars are in Thousands

<u>Tax Year</u>	<u>Pension Amount</u>	<u>Estimated Tax</u>	<u>Tax & Interest</u>
1984	\$129,015	\$5,806	\$12,221
1985	\$148,111	\$6,665	\$13,230
1986	\$149,733	\$6,738	\$12,566
1987	\$151,238	\$6,806	\$11,876
1988	\$163,161	\$6,853	\$11,136
1989	\$172,186	\$6,887	\$10,366
1990	\$184,365	\$7,375	\$10,214
1991	\$197,171	\$7,887	\$9,977
Total		\$55,016	\$91,585
1984-1988		\$32,867	\$61,029
1989-1991		\$22,149	\$30,556

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ADMINISTRATIVE IMPACT:

Information from the state of Arizona shows that they have experienced about \$1.7 million in administrative costs associated with all phases of processing refunds to about 44,150 taxpayers involved in Arizona's Davis related cases. These costs average about \$38.50 for each taxpayer receiving a refund. Kansas has the potential of preparing refunds for about 29,000 taxpayers involved in the military retirement case between tax years 1984 and 1991. The process of issuing refunds in Kansas will not be much different than Arizona. Using the average cost per taxpayer of \$38.50 the estimated cost for the Department of Revenue to issue refunds to 29,000 taxpayers would be about \$1.2 million (29,000 x \$38.50).

LEGAL IMPACT:

Under the Kansas Income Tax Act, refund claims are subject to a period of limitations set out in K.S.A. 79-3230. The bill does not address the manner in which the statute of limitations shall apply to the refunds available to qualified individuals.

There are presently pending before the Director of Taxation numerous income tax refund claims filed by military retirees pursuant to the provisions of K.S.A. 79-32,105. Presumably, nothing contained in this bill would preclude such persons from continuing to pursue their pending claims to recover not only the taxes previously paid but also interest thereon. Further, this bill would not prohibit such persons from obtaining a double recovery of refunds under both K.S.A. 79-32,105 and the provisions of this bill. Likewise, qualified individuals could attempt to obtain a double recovery in the class action lawsuit that is currently in progress as well as under the provisions of this bill.

APPROVED BY:


Nancy Parrish
Secretary of Revenue

MEMORANDUM

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: February 21, 1994

FROM: Kansas Department of Revenue

RE: House Bill 2866
As Introduced

BRIEF OF BILL:

House Bill 2866, as introduced, is new legislation providing for a refundable tax credit for the amount of military retirement income tax overpayment plus interest. The credit is 25% of the total overpayment not including interest. The credits would be available for tax years 1994 through 1997.

The effective date of this bill would be July 1, 1994.

FISCAL IMPACT:

Passage of this bill would reduce fiscal year 1995 general fund revenues by a maximum amount of \$25.1 million.

Based on figures from the department of defense for benefits paid to Kansas retirees from 1984 through 1991, and making two assumptions; 1) reducing the total pension amount by an estimated non-compliance percentage for each tax year, and 2) assuming an average tax rate in effect during each of those years. Interest is calculated at 12% per year through April 15, 1995. The total impact could be about \$100.3 million. The principal due in each of the next four fiscal years is \$25.1 million (\$100.3 million* 25%).

The maximum amount of credits in fiscal year 1995 would be \$25.1 million. Adding interest to the remaining amounts, the fiscal impacts in the next three fiscal years are listed below:

Fiscal Year	25% Credit	Interest	Total Due
1996	\$25.1 million	12%	\$28.1 million
1997	\$25.1 million	24%	\$31.1 million
1998	\$25.1 million	36%	\$34.1 million

Total Payments over the four fiscal years is \$118.4 million.

ADMINISTRATIVE IMPACT:

Information from the state of Arizona shows that they have experienced about \$1.7 million in administrative costs associated with all phases of processing refunds to about 44,150 taxpayers involved in Arizona's Davis related cases. These costs average about \$38.50 for each taxpayer receiving a refund. Kansas has the potential of approving credits for about 29,000 taxpayers involved in the military retirement case between tax years 1984 and 1991. The process of approving credits in Kansas will not be much different than the refund approval process in Arizona. Using the average cost per taxpayer of \$38.50 the estimated cost for the Department of Revenue to approve credits to 29,000 taxpayers would be about \$1.2 million (29,000 x \$38.50).

LEGAL IMPACT:

A class action lawsuit brought on behalf of persons who paid Kansas income tax on military retired pay in tax years 1984-1991 is currently being litigated. The members of this class are all "qualified individuals" as defined in this bill. It is possible that the class of retirees could prevail in this lawsuit and recover the full amount of taxes paid in these prior years, with interest thereon at the statutory rate. If this were to occur, there is nothing that would preclude the class members from obtaining relief in this lawsuit and also obtaining credits against future income tax liability pursuant to the provisions of this bill.

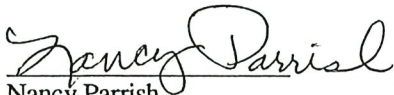
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Likewise, there are currently pending before the Director of Taxation numerous income tax refund claims filed by military retirees. The taxpayers who have filed these claims are also "qualified individuals" as defined in this bill. There is nothing in the bill that would preclude these taxpayers from obtaining an income tax refund pursuant to the provisions of K.S.A.79-32,105 and also obtaining credits against future income tax liability pursuant to the provisions of this bill.

Under the Kansas Income Tax Act, refund claims are subject to a period of limitations set out in K.S.A. 79-3230. This bill does not address the manner in which the statute of limitations shall apply to the credits and refunds available to qualified individuals.

Numerous persons who would be deemed qualified individuals under this bill no longer file Kansas income tax returns and would have no way in which to claim a credit in future years. It is unclear how such individuals are to obtain their "refundable credit amount."

APPROVED BY:



Nancy Parrish
Secretary of Revenue

MEMORANDUM

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: February 21, 1994

FROM: Kansas Department of Revenue

RE: House Bill 2892
As Introduced

BRIEF OF BILL:

House Bill 2892, as introduced, is new legislation authorizing a credit of an amount equal to the portion of income taxes paid by a qualified individual on retirement benefits received for service in the armed forces. The credit may be used in 33 1/3% increments against the current income tax liability of the individual to be taken over a 3 year period between tax years 1994 and 1997.

The effective date of this bill would be July 1, 1994.

FISCAL IMPACT:

Passage of this bill would reduce fiscal year 1995 general fund revenues by a maximum amount of \$18.3 million.

Based on figures from the department of defense for benefits paid to Kansas retirees from 1984 through 1991, and making two assumptions; 1) reducing the total pension amount by an estimated non-compliance percentage for each tax year, and 2) assuming an average tax rate in effect during each of those years. The total impact could be about \$55.0 million. The principal due in each of the next three fiscal years is \$18.3 million (\$55.0 million* 33 1/3%).

Fiscal Year	33 1/3% Credit
1996	\$18.3 million
1997	\$18.3 million

Total Payments over the three fiscal years is \$55.0

ADMINISTRATIVE IMPACT:

Information from the state of Arizona shows that they have experienced about \$1.7 million in administrative costs associated with all phases of processing refunds to about 44,150 taxpayers involved in Arizona's Davis related cases. These costs average about \$38.50 for each taxpayer receiving a refund. Kansas has the potential of approving credits for about 29,000 taxpayers involved in the military retirement case between tax years 1984 and 1991. The process of approving credits in Kansas will not be much different than the refund approval process in Arizona. Using the average cost per taxpayer of \$38.50 the estimated cost for the Department of Revenue to approve credits to 29,000 taxpayers would be about \$1.2 million (29,000 x \$38.50).

LEGAL IMPACT:

Under the Kansas Income Tax Act, refund claims are subject to a period of limitations set out in K.S.A. 79-3230. The bill does not address the manner in which the statute of limitations shall apply to the credits and refunds available to qualified individuals.

It is difficult to anticipate the effects of the provisions contained in Section 2 of the bill which require that the director of taxation obtain from each qualified individual a release of all claims against the state, including claims for accrued interest on the "refundable credit amount." Taxpayers who have pending with the

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director claims for refunds of taxes paid on military retired pay might refuse to waive their claims and instead continue their efforts to obtain payment of full refunds together with interest thereon at the statutory rate as opposed to accepting a three year payout of tax, but not interest, through the credit/refund provisions of the bill. Taxpayers may also refuse to waive their claims and attempt to obtain full refunds, together with interest thereon, by continuing to pursue the class action litigation that is currently in progress in the state courts.

Finally, numerous persons who would be deemed qualified individuals under this bill no longer file Kansas income tax returns and would have no way in which to claim a credit in future years. This would include taxpayers who no longer reside in Kansas, taxpayers who are deceased, and taxpayers who, because of low income, are not required to file income tax returns. It is unclear how such individuals are to obtain their "refundable credit amount."

APPROVED BY:


Nancy Parrish
Secretary of Revenue

MEMORANDUM

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: February 21, 1994

FROM: Kansas Department of Revenue

RE: House Bill 3042
As Introduced

BRIEF OF BILL:

House Bill 3042, as introduced, would create the Military Retirees Income Tax Refund Fund. On July 1, 1994, and July 1, 1995, \$30.0 million would be transferred from the State General Fund to the new fund. Individuals who paid Kansas income tax on federal military retirement benefits between 1984 and 1991 are entitled to a refund of all such taxes as provided in the lawsuit settlement. During the 1994 and 1995 legislative sessions, the money transferred to the Military Retirees Income Tax Refund Fund would be excluded from the money transferred on each July 1 from the State General Fund to the State Cash Operating Reserve Fund.

The effective date of this bill would be upon its publication in the Kansas Register.

FISCAL IMPACT:

Passage of this bill would reduce fiscal year 1995 general fund revenues by a maximum amount of \$30.0 million. Fiscal year 1996 state general fund will also be reduced by \$30.0 million.

ADMINISTRATIVE IMPACT:

Information from the state of Arizona shows that they have experienced about \$1.7 million in administrative costs associated with all phases of processing refunds to about 44,150 taxpayers involved in Arizona's Davis related cases. These costs average about \$38.50 for each taxpayers receiving a refund. Kansas has the potential of preparing refunds for about 29,000 taxpayers involved in the military retirement case between tax years 1984 and 1991. The process of issuing refunds in Kansas will not be much different than Arizona. Using the average cost per taxpayer of \$38.50 the estimated cost for the Department of Revenue to issue refunds to 29,000 taxpayers would be about \$1.2 million (29,000 x \$38.50).

LEGAL IMPACT:

This bill would create "the military retirees income tax refund fund." It is unclear if this is intended to be the same as "the veterans income tax refund fund" referred to on lines 31 and 32.

The bill provides that \$30 million shall be placed in the military retirees income tax refund fund in both FY 1994 and 1995. The fund will then be used to make payments to persons who paid tax on military retired pay in tax years 1984 through 1991, in accordance with the terms of a settlement agreement to be entered into by the parties in the Barker class action and approved by the court. Since no settlement agreement has yet been negotiated or approved, it is difficult to anticipate the ramifications, legal or otherwise, of this bill. Also, the Kansas Income Tax Act provides for a period of limitation on income tax refund claims. The bill does not address the manner in which the statute of limitations shall apply to the income tax refunds available under its provisions. Further, the bill speaks only to "a refund of all taxes" and does not address the payment of any interest thereon.

Prior to approving any settlement agreement, it is likely that the court would allow individual class members the option to remain in the class and participate in the settlement or exclude themselves from the class and pursue relief on an individual basis. It is possible that class members who "opt-out" would be entitled to relief as the result of

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other lawsuits or administrative claims. The state would then be liable to pay those claims in addition to providing \$60 million in funding to the settlement fund.

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Nancy Parrish", written in dark ink.

Nancy Parrish
Secretary of Revenue