

Approved: April 28, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 12:00 noon a.m. on March 31, 1994 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Lee, Senator Reynolds, Senator Sallee, Senator Wisdom

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

Conferees appearing before the committee: Kevin Fowler, Counsel, Kansas Military Retirees for Tax Fairness
Nancy Parrish, Secretary, Department of Revenue

Others attending: See attached list

APPROVAL OF MINUTES

Senator Tiahrt moved to approve the minutes of March 28 and March 29, 1994. The motion was seconded by Senator Reynolds. The motion carried.

HB 3068--INCOME TAX REFUNDS FOR RETIRED MILITARY PERSONNEL

Kevin Fowler, Counsel, Kansas Military Retirees for Tax Fairness, passed to the committee a synopsis of Revised **HB 3068**. (Attachment 1) He also passed to the committee a copy of a proposed bill. (Attachment 2) He said this revised version utilizes the amendments proposed by the Secretary of Revenue and contains certain additional provisions for clarity and he listed the key points. This version did not include an opt-out provision.

Some of the members of the committee commented why did they want the opt-out provision because it could jeopardize the settlement of the tax refunds. They felt this should be settled to a finality. Other committee members said some of their constituents were not happy with this bill and they should be provided the opt-out. The committee did want to bring this issue to a closure and did not want it to become null and void if there were too many people who chose to opt-out.

Mr. Fowler said they had also brought with them a copy of a bill without the opt-out provision. (Attachment 3) He said whatever would suit the committee is fine with them. He also pointed out language which requires the plaintiffs in *Barker v State of Kansas* to dismiss, with prejudice, their pending application for attorney's fees against the State.

Mark Burghart, Counsel, Department of Revenue, said they did not want to settle only part of this case and have it carry on into the future. If it is truly a settlement, it should be closed.

Mr. Fowler said the bill assumes the 5 percent rate of interest on past due taxes and also 5 percent on the installment payments in the future.

Senator Martin moved that the retirees be allowed the ability to opt-out in the bill but not include any threshold like 3 percent. The motion was seconded by Senator Tiahrt.

Senator Bond offered a substitute motion to not allow any opt-out in the bill. Senator Reynolds seconded the motion. The substitute motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 12:00 noon a.m. on March 31, 1994.

The committee began a discussion of funding for the paying of the back taxes and whether it should be paid by tax credits and checks. Bill Caton, Kansas Finance Development Authority, advised the committee on procedures to issue bonds for financing.

Senator Bond made a motion for a three year pay out with the use of tax credits optional and the balance needed beyond tax credits be funded by 5 year bonds to be under the authority of the Finance Council and KFDA. The bonds would be backed by a pledge of no more than 1 1/2 percent of the state withholding revenue. The motion was seconded by Senator Feleciano.

There were questions from the committee regarding what the interest would be for the 5 years. Mr. Caton said they would be 4.89 percent interest on what is paid out on an annual basis. There was a suggestion to pay it out of the ending balance. Some members said they did not support using bonds and would like to find some other way of funding.

Senator Martin made a substitute motion to accept video lottery as the funding mechanism. The motion was seconded by Senator Lee.

There was more discussion about the appropriate funding..

The vote was taken on the substitute motion. The motion failed.

The vote was then taken on the original motion. The motion carried.

Mr. Frieden brought up about paying interest on the back years. This has not been discussed but it was assumed this was in the original bill.

Senator Martin moved to pay 5 percent interest on the back years. The motion was seconded by Senator Tiahrt. The motion carried.

There was a question about the interest on future payments. Mr. Caton said in regard to the interest on the bond, if bonds are issued, why not pay it all at once. No need to pay 3 years interest.

Senator Bond moved to remove the 3 year payout. The motion was seconded by Senator Wisdom. The motion carried.

The committee turned their attention to appropriations or whatever needs to be done. Secretary Parrish pointed out that the tax credits could come all in one year. Mr. Frieden said in the state which allowed tax credits, about 10 to 15 percent took credit. Arizona was the only state that he knew that had used the tax credits. It was also stated that the refunds would have federal tax liability.

Mr. Frieden also spoke about the waiving of attorney fees against the state for getting the law changed. This was the fee which had accrued up to that time. This had been done by stipulation in the copy of the bill which was passed out.

There were questions for the staff concerning the payouts to surviving spouse. A provision would have to be made in the bill for this.

The committee requested a balloon on the bill on what was done today.

The meeting adjourned at 1:20 p.m.

The next meeting is scheduled for Friday, April 1, 1994 at 8:00 a.m.

GUEST LIST
SENATE ASSESSMENT AND TAXATION COMMITTEE

DATE: March 31, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>Kevin McBride</i>	<i>Topeka</i>	<i>observer</i>
<i>Bob McGill</i>	<i>Topeka</i>	<i>DMG Assoc.</i>
<i>HAROLD P. TITS</i>	<i>TOPEKA</i>	<i>AARP-CCF</i>
<i>J. Friedman</i>	<i>" "</i>	<i>RTH</i>
<i>Hollis B. Logan</i>	<i>Topeka</i>	<i>USAF, Retired</i>
<i>William Richards</i>	<i>TOPEKA</i>	<i>USA (RET.)</i>
<i>C.L. Copeland</i>	<i>Lawrence, KS</i>	<i>USMC (RET.)</i>
<i>Halsey Hines</i>	<i>Topeka</i>	<i>CDR, USN (RL)</i>
<i>Francine HINES</i>	<i>TOPEKA</i>	<i>AUSA</i>
<i>BED BRADLEY</i>	<i>TOPEKA</i>	<i>KS Assoc of Counties</i>
<i>Bob Krenum</i>	<i>TOPEKA</i>	<i>AUSA</i>
<i>Glen Coulter</i>	<i>Topeka</i>	<i>KS Good Roads Assn.</i>
<i>E.R. Moss</i>	<i>" "</i>	<i>KAPA</i>
<i>Patrick Skerley</i>	<i>Topeka</i>	<i>20 Ship Lines</i>
<i>Russ Freely</i>	<i>Topeka</i>	<i>KUMA</i>
<i>Jack Smith</i>	<i>Topeka</i>	<i>KDOR</i>
<i>Michelle Clum</i>	<i>Topeka</i>	<i>att. Jon Small</i>
<i>JO ANDERSON</i>	<i>TOPEKA</i>	<i>KSCPA</i>
<i>Jim Ludwig</i>	<i>" "</i>	<i>Western Resources</i>

MEMORANDUM

TO: Senate Committee on Assessment and Taxation
FROM: John Frieden and Kevin Fowler, Kansas Military Retirees
for Tax Fairness
SUBJ: Synopsis of Revised House Bill No. 3068
DATE: March 31, 1994

We have prepared a revised version of House Bill No. 3068 which addresses some concerns and suggestions expressed by some members of the Committee. This revision utilizes the amendments proposed by the secretary of revenue and contains certain additional provisions for clarity. The key points of revision are:

1. Language which affords eligible persons the right to request exclusion or opt-out from the settlement -- but if too many opt-out [i.e., more than 3%], the settlement is void;

2. Language which gives eligible persons the option of receiving one or more allocations of income tax credits in lieu of refund payments;

3. Language which authorizes the transfer of money from the military retirees income tax refund fund to the state general fund in amounts equal to allocations of income tax credits;

4. Language which requires an adjustment in the 1996 demand transfer to account for any overestimate or underestimate in refund payments;

5. Language which requires a refund payment to eligible persons for any unused allocations of income tax credits no later than September 30, 1997;

6. 5% interest on past overpayments and unpaid installments;

7. Language which requires the plaintiffs in Barker to dismiss, with prejudice, their pending application for attorney's fees against the State; and

8. Language which recognizes that counsel for the retired veterans will seek an award of reasonable litigation, costs and expenses, including reasonable attorney's fees, from the district court and that any such award will be borne on a pro rata basis by all eligible persons who receive refund payments and/or tax credits.

*Senate Assessment + Tax
March 31, 1994
attach 1-1*

HOUSE BILL No. 3068

AN ACT relating to income taxation; concerning refunds of tax on federal military retirement benefits.

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

Section 1. (a) The secretary of revenue is hereby authorized and directed to promptly negotiate, approve and recommend judicial approval of a settlement agreement to resolve all tax refund claims pending in the Barker class action for the amounts set forth in subsection (d). As used in this section, "Barker class action" means the consolidated class action styled Keyton E. Barker, et al. v. State of Kansas, et al., Nos. 89-CV-666 and 89-CV-1100, filed in the district court of Shawnee county, Kansas. The district court of Shawnee county, Kansas shall have jurisdiction to apply the provisions of this section. The settlement agreement shall include:

(1) provisions for joint administration under the supervision of the secretary of revenue and class counsel or their respective designees in accordance with methodologies for the calculation and payment of refund claims, including income tax credits, to eligible persons;

(2) stipulations to authorize eligible persons to request exclusion, by a date to be specified, prior to the commencement of any hearing in the district court of Shawnee county, Kansas, which is scheduled to consider whether the settlement agreement should receive final approval;

(3) stipulations that eligible persons who timely request exclusion in accordance with the settlement agreement shall not be entitled to any refund payment or payments and/or income tax credits hereunder, as applicable, unless the request for exclusion is revoked in writing prior to the commencement of the hearing referenced in subsection (a)(2);

(4) stipulations that the installment amounts set forth in subsection (d) shall be reduced each year by the total amount of any refund payments and/or income tax credits, as applicable, that would have otherwise been due under this section to eligible persons who timely request exclusion and do not revoke such request in writing prior to the commencement of the hearing referenced in subsection (a)(2);

(5) stipulations that a request for exclusion submitted by or on behalf of two joint income taxpayers who are eligible persons shall be considered one request for exclusion, and that no refund payments shall be made nor tax credits authorized under this section if more than 3% of eligible persons timely and properly request exclusion, without revoking the same, prior to the commencement of the hearing referenced in subsection (a)(2);

(6) stipulations that any eligible person may elect, at his or her option, to receive and utilize an allocation of income tax credits in lieu of any refund payment otherwise due hereunder and that any such allocations shall be issued at or about the time refund payments are made;

(7) stipulations that the plaintiffs in the Barker class action shall dismiss, with prejudice, their pending motion

for an award of attorney's fees under 42 U.S.C. § 1988, and that class counsel in the Barker class action may submit one or more applications with the district court of Shawnee county, Kansas, for an award of reasonable litigation costs and expenses, including reasonable attorney's fees, which shall be paid from the military retirees income tax refund fund referenced in subsections (c) and (d) through pro rata reductions in refund payments and/or allocations of income tax credits;

(8) stipulations that all refund payments and/or income tax credit allocations hereunder shall be reduced by a pro rata amount of any reasonable litigation costs and expenses, including reasonable attorney's fees, which may be awarded to class counsel in the Barker class action by the district court of Shawnee county, Kansas;

(9) stipulations for reasonable notice to eligible persons regarding the substance of the settlement agreement, the right to request exclusion and the right to be heard before the district court of Shawnee county, Kansas; and

(10) any other stipulations, terms or conditions consistent with this section which may be necessary to effectuate the prompt and final disposition of the Barker class action; The settlement agreement shall be submitted to the district court of Shawnee county, Kansas no later than May 15, 1994.

(b) Subject to the provisions of subsection (c), any person who paid Kansas individual income tax on or on account of federal military retirement benefits for any or all of the tax years from 1984 through 1991 shall be deemed to be an "eligible person"

entitled, in accordance with the terms of the settlement agreement referenced in subsection (a), to receive one or more refund payments and/or income tax credit allocations, as applicable, in an aggregate amount equal to: that portion of the tax actually paid pursuant to the Kansas income tax act which is attributable to retirement benefits received for service in the armed forces of the United States; and interest on the amount of each overpayment at the rate of 5 percent per annum from the date of overpayment through June 30, 1994. As used in this section, "federal military retirement benefits" shall include all benefits calculated and paid by the United States in accordance with applicable provisions of Title 10 and 14 of the United States Code as retired pay, retainer pay or survivor's benefits. Where any person otherwise entitled to receive a refund payment and/or income tax credit allocation under this section is deceased, the right to receive payment shall pass to the person's surviving spouse, except that if any such deceased person has no surviving spouse, the right to receive a refund shall be determined in accordance with the laws of intestate succession. Any otherwise eligible person who cannot be located by class counsel in Barker or the secretary of revenue before January 31, 1997, despite the exercise of reasonable diligence, shall become ineligible to receive any refund payment or allocation of income tax credits hereunder.

(c) There is hereby created a military retirees income tax refund fund in the state treasury which shall be administered by the secretary of revenue in accordance with this section and appropriation acts. The military retirees income tax refund fund

shall be utilized to make refund payments to eligible persons who do not affirmatively elect to receive and use an allocation of income tax credits hereunder. The aggregated amount of any income tax credits allocated to and utilized by eligible persons each year may be transferred from the military retirees income tax refund fund to the state general fund as soon as practicable. No expenditures or transfers from the military retirees income tax refund fund shall be made until and unless: no more than 3% of eligible persons timely and properly request exclusion, without revoking the same, prior to the commencement of the hearing referenced in subsection (a)(2); and the settlement agreement referenced in subsection (a) is approved by the district court of Shawnee county, Kansas after eligible persons have been afforded reasonable notice and an opportunity to be heard.

(1) In the event of judicial approval, administration of the military retirees income tax refund fund, including the allocation of any income tax credits hereunder, shall be subject to the jurisdiction and supervisory control of the district court of Shawnee county, Kansas, until such time as all refund payments have been made to and/or income tax credit allocations have been utilized by all eligible persons in accordance with the terms of the settlement agreement. The payment of refunds and/or the allocation and use of income tax credits as provided in the settlement agreement, less the amount of any reasonable litigation costs and expenses, including reasonable attorney's fees, which may be awarded by the district court of Shawnee county, Kansas shall represent a final and complete settlement of all claims[,

including any appeal or administrative process perfected pursuant to law for the purpose of obtaining a refund of income tax imposed upon federal military retirement benefits,] of all federal military retired personnel for taxable years 1984 through 1991 against the State of Kansas, its departments, agencies, officials, employees and agents regarding the taxation of federal military retirement benefits for the taxable years 1984 through 1991.

(2) In the event that 3% of eligible persons timely and properly request exclusion, without revoking the same, as set forth in subsection (a)(5), or the settlement agreement does not receive judicial approval, no expenditures or refund payments shall be made pursuant to this section. If the settlement agreement is rendered null or void for any reason, all reasonable expenses incurred in furnishing notice to eligible persons shall be chargeable to the military retirees income tax refund fund.

(d) On July 1, 1994, the director of accounts and reports shall transfer \$21,759,641.00 from the state general fund to the military retirees income tax refund fund for expenditure pursuant to one or more vouchers approved by the secretary of revenue or by the secretary's designee. On July 1, 1995, the director of accounts and reports shall transfer \$21,759,641.00, plus interest thereon at the rate of 5% per annum from July 1, 1994 through June 30, 1995, from the state general fund to the military retirees income tax refund fund. On July 1, 1996, the director of accounts and reports shall transfer \$21,759,641.00, plus interest thereon at the rate of 5% per annum from July 1, 1994 through June 30, 1996, from the state general fund to the military retirees income

tax refund fund, provided that the amount of such transfer shall be adjusted to account for any overestimates or underestimates of the refund payments and/or income tax credit allocations due hereunder. No later than September 30, 1997, any eligible person receiving one or more allocations of income tax credits hereunder shall be entitled to a refund payment equal in amount to any unused portion of such income tax credits. Expenditures from the military retirees income tax refund fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of revenue or by the secretary's designee in accordance with the settlement agreement referenced in subsection (a) as approved by the District Court of Shawnee County, Kansas.

Section 2. This act shall take effect and be in force from and after its publication in the Kansas Register.

NON OPT-OUT

HOUSE BILL No. 3068

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Section 1. (a) The secretary of revenue is hereby authorized and directed to promptly negotiate, approve and recommend judicial approval of a settlement agreement to resolve all tax refund claims pending in the Barker class action for the amounts set forth in subsection (d). As used in this section, "Barker class action" means the consolidated class action styled Keyton E. Barker, et al. v. State of Kansas, et al., Nos. 89-CV-666 and 89-CV-1100, filed in the district court of Shawnee county, Kansas. The district court of Shawnee county, Kansas shall have jurisdiction to apply the provisions of this section. The settlement agreement shall include:

(1) provisions for joint administration under the supervision of the secretary of revenue and class counsel or their respective designees in accordance with methodologies for the calculation and payment of refund claims, including income tax credits, to eligible persons;

(2) stipulations that any eligible person may elect, at his or her option, to receive and utilize an allocation of income tax credits in lieu of any refund payment otherwise due hereunder and that any such allocations shall be issued at or about the time refund payments are made;

(3) stipulations that the plaintiffs in the Barker class action shall dismiss, with prejudice, their pending motion for an award of attorney's fees under 42 U.S.C. § 1988, and that class counsel in the Barker class action may submit one or more applications with the district court of Shawnee county, Kansas, for an award of reasonable litigation costs and expenses, including reasonable attorney's fees, which shall be paid from the military retirees income tax refund fund referenced in subsections (c) and (d) through pro rata reductions in refund payments and/or allocations of income tax credits;

(4) stipulations that all refund payments and/or income tax credit allocations hereunder shall be reduced by a pro rata amount of any reasonable litigation costs and expenses, including reasonable attorney's fees, which may be awarded to class counsel in the Barker class action by the district court of Shawnee county, Kansas;

(5) stipulations for reasonable notice to eligible persons regarding the substance of the settlement agreement, the right to request exclusion and the right to be heard before the district court of Shawnee county, Kansas; and

(6) any other stipulations, terms or conditions consistent with this section which may be necessary to effectuate the prompt and final disposition of the Barker class action; The settlement agreement shall be submitted to the district court of Shawnee county, Kansas no later than May 15, 1994.

(b) Subject to the provisions of subsection (c), any person who paid Kansas individual income tax on or on account of federal

military retirement benefits for any or all of the tax years from 1984 through 1991 shall be deemed to be an "eligible person" entitled, in accordance with the terms of the settlement agreement referenced in subsection (a), to receive one or more refund payments and/or income tax credit allocations, as applicable, in an aggregate amount equal to: that portion of the tax actually paid pursuant to the Kansas income tax act which is attributable to retirement benefits received for service in the armed forces of the United States; and interest on the amount of each overpayment at the rate of 5 percent per annum from the date of overpayment through June 30, 1994. As used in this section, "federal military retirement benefits" shall include all benefits calculated and paid by the United States in accordance with applicable provisions of Title 10 and 14 of the United States Code as retired pay, retainer pay or survivor's benefits. Where any person otherwise entitled to receive a refund payment and/or income tax credit allocation under this section is deceased, the right to receive payment shall pass to the person's surviving spouse, except that if any such deceased person has no surviving spouse, the right to receive a refund shall be determined in accordance with the laws of intestate succession. Any otherwise eligible person who cannot be located by class counsel in Barker or the secretary of revenue before January 31, 1997, despite the exercise of reasonable diligence, shall become ineligible to receive any refund payment or allocation of income tax credits hereunder.

(c) There is hereby created a military retirees income tax refund fund in the state treasury which shall be administered by

the secretary of revenue in accordance with this section and appropriation acts. The military retirees income tax refund fund shall be utilized to make refund payments to eligible persons who do not affirmatively elect to receive and use an allocation of income tax credits hereunder. The aggregated amount of any income tax credits allocated to and utilized by eligible persons each year may be transferred from the military retirees income tax refund fund to the state general fund as soon as practicable. No expenditures or transfers from the military retirees income tax refund fund shall be made until and unless the settlement agreement referenced in subsection (a) is approved by the district court of Shawnee county, Kansas after eligible persons have been afforded reasonable notice and an opportunity to be heard.

(1) In the event of judicial approval, administration of the military retirees income tax refund fund, including the allocation of any income tax credits hereunder, shall be subject to the jurisdiction and supervisory control of the district court of Shawnee county, Kansas, until such time as all refund payments have been made to and/or income tax credit allocations have been utilized by all eligible persons in accordance with the terms of the settlement agreement. The payment of refunds and/or the allocation and use of income tax credits as provided in the settlement agreement, less the amount of any reasonable litigation costs and expenses, including reasonable attorney's fees, which may be awarded by the district court of Shawnee county, Kansas shall represent a final and complete settlement of all claims[, including any appeal or administrative process perfected pursuant

to law for the purpose of obtaining a refund of income tax imposed upon federal military retirement benefits,] of all federal military retired personnel for taxable years 1984 through 1991 against the State of Kansas, its departments, agencies, officials, employees and agents regarding the taxation of federal military retirement benefits for the taxable years 1984 through 1991.

(2) In the event that the settlement agreement does not receive judicial approval, no expenditures or refund payments shall be made pursuant to this section. If the settlement agreement is rendered null or void for any reason, all reasonable expenses incurred in furnishing notice to eligible persons shall be chargeable to the military retirees income tax refund fund.

(d) On July 1, 1994, the director of accounts and reports shall transfer \$21,759,641.00 from the state general fund to the military retirees income tax refund fund for expenditure pursuant to one or more vouchers approved by the secretary of revenue or by the secretary's designee. On July 1, 1995, the director of accounts and reports shall transfer \$21,759,641.00, plus interest thereon at the rate of 5% per annum from July 1, 1994 through June 30, 1995, from the state general fund to the military retirees income tax refund fund. On July 1, 1996, the director of accounts and reports shall transfer \$21,759,641.00, plus interest thereon at the rate of 5% per annum from July 1, 1994 through June 30, 1996, from the state general fund to the military retirees income tax refund fund, provided that the amount of such transfer shall be adjusted to account for any overestimates or underestimates of the refund payments and/or income tax credit allocations due

hereunder. No later than September 30, 1997, any eligible person receiving one or more allocations of income tax credits hereunder shall be entitled to a refund payment equal in amount to any unused portion of such income tax credits. Expenditures from the military retirees income tax refund fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of revenue or by the secretary's designee in accordance with the settlement agreement referenced in subsection (a) as approved by the District Court of Shawnee County, Kansas.

Section 2. This act shall take effect and be in force from and after its publication in the Kansas Register.