

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on February 23, 1994 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Leah Robinson, Legislative Research Department  
Alan Conroy, Legislative Research Department  
Norm Furse, Revisor of Statutes  
Judy Bromich, Administrative Assistant  
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Senator Carolyn Tillotson  
Senator Lana Oleen  
Senator Todd Tiaht  
Pete McGill, lobbyist for Kansas Military Retirees for Tax Fairness  
John C. Frieden, attorney for military retirees  
Garvin McDaniels, Chief Petty Officer, U.S. Navy, Retired  
Chuck Yunker, Adjutant, American Legion

Others attending: See attached list

**SB 707 -- VETERANS INCOME TAX REFUND FUND**

Senator Carolyn Tillotson testified before the Committee in support of SB 707, noting that the refund of taxes is a big issue in Leavenworth. She said that because the taxes were found to be illegal, the state of Kansas should use the funding mechanism in the bill to pay the \$60 million obligation over two years by using ending balances.

Senator Lana Oleen told members that she is the chief sponsor of the bill; there are 20 co-sponsors. She reviewed legislative involvement in the issue of state income taxes on retirement benefits collected since 1971. She stated that the executive branch did not respond to opportunities in 1989, 1990, and 1991 to settle the issue, so the taxpayers have been sent mixed messages from the Legislature. Senator Oleen said that the Department of Revenue estimates that \$80-\$85 million has been illegally collected, and pointed out that SB 707 provides an opportunity for the Legislature to settle at \$60 million by using state ending balances over two years. She told members that SB 707 keeps the class together to avoid further lawsuits. She requested that the Committee, if they could not support the bill, advance SB 707 to the Senate floor for debate. Senator Oleen's written testimony (Attachment 1) was provided at a later date.

Senator Todd Tiaht urged the Committee to provide a way for military retirees, who believe they have been illegally taxed, to feel good about the state of Kansas. He told members that SB 707 is compromise legislation.

Pete McGill testified on behalf of the Kansas Military Retirees for Tax Fairness in support of SB 707 and reviewed his written testimony (Attachment 2). Included in his testimony was a pamphlet of questions about legislative resolution of the problem and answers provided by legal counsel for the retirees.

John C. Frieden, chief counsel for the military retirees, presented his written testimony (Attachment 3) which provided a background of the litigation and explained what the Kansas Military Retirees for Tax Fairness would like to accomplish. Mr. Frieden testified that there are approximately 19,000 retired military personnel and/or spouses, and because this class of persons is an aging class, it is their desire to resolve the cases in a timely manner. He stated that the retirees are willing to work with the Legislature to come to a resolution so that a costly and timely court process can be avoided.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 23, 1994.

Mr. Frieden reviewed the history of the Barker case following the US Supreme Court ruling in the Davis v. Michigan case which stated that states cannot tax federal retirees' pensions if state workers' pensions are tax-exempt. He told members that after the Barker case was filed, the class of military retirees was certified as a non-opt out class, which is important because if a person is in this class and the case is solved, it is solved for the entire class. He informed the Committee that there is a motion to decertify this class which is pending in Shawnee County District Court. However, Judge Allen has stated that he does not intend to rule on this motion until all appeals are finished. Therefore, Mr. Frieden believes that this class provides a clear and certain vehicle by which to settle this case.

Mr. Frieden reviewed the procedure for exhausting administrative remedies and expressed the frustration felt by the retirees who have tried using the process to assert their refund claims. He appealed to the Committees' sense of fairness as he summarized the Department of Revenue's change of position regarding this issue. He also questioned whether it was fair for those people who paid taxes from 1984-1991 to be denied refunds while those who refused to pay in the same time period have received the benefit of the Supreme Court decision.

Mr. Frieden discussed the bottom line for resolving this issue legislatively (see Attachment 3-12), but indicated that the timeframe and amount of the settlement are still negotiable. He told the Ways and Means Committee that once an acceptable resolution is determined legislatively, he would take the resolution to the Shawnee Co. District Court and testify that it is fair and reasonable. He would also file an application for reasonable fees which would eventually be set by the Judge. Subsequently, the Court would give class members notice and, after hearings, the Court would approve or disapprove the settlement and attorney fees which are paid from the settlement. He stated that he would recommend any settlement similar to that discussed in his written testimony and indicated that he believed the Court would approve.

Garvin McDaniels, Retired Chief Petty Officer, U.S. Navy, appeared before the Committee in support of SB 707 and reviewed his written testimony (Attachment 4).

Chuck Yunker, Adjutant, Kansas American Legion, testified in support of SB 707 and reviewed Attachment 5. Although Mr. Yunker had not discussed the settlement suggested by Mr. Frieden with members of the American Legion, he stated that he believed it was a settlement that the Legion would support.

The Chairman opened the hearing to questions. In response to a senator's question, Mr. Frieden stated that the committee he refers to in his written testimony is composed of 18 retirees located throughout Kansas who represent different coalitions of retirees and speak for them. He indicated that other options for compensating the retirees have been considered, but he believes it would be difficult to structure a settlement by allowing retirees to offset current state income tax liabilities for future years because some live out of state, some haven't paid taxes, and others have died. If credits were given, however, the attorney fee would still be paid from the fund.

Mr. Frieden, in answer to Senator Bogina, stated that the amount each taxpayer would receive would be determined from tax returns. He stated that his firm would like to undertake the responsibility of administering the refunds in conjunction with the state.

Senator Salisbury expressed her opinion that the state needs some assurance that retirees as a class would be satisfied with this proposal and not appear in opposition to it before the Court. Mr. Frieden stated that he believes the possibility of that occurring is extremely remote. In discussing the non-opt out class, he said that members would be bound by the settlement and could not file their own suit. In answer to a question, he said that a retiree who wants 100% of the amount he believes is owed to him could object to the Court and appeal the decision, though he does not believe there have been appeals in any of the other cases.

In response to inquiries, Mr. Frieden stated that in the cases where settlement has been reached, attorney fees have ranged from 11% to a high somewhere in the upper 30% range. He stated that he would not make an application on the higher side of the range. He indicated to Senator Brady that he would be willing to discuss putting a specific amount in legislation for attorney fees if that would be important to the Legislature. Senator Karr expressed concern about the amount the retirees would receive once fees were deducted from the settlement.

Senator Rock questioned whether the issue of state employees contributing to KPERS and paying taxes on their contributions related to the retirees' income tax refund. Mr. Frieden stated that the Department of Revenue had taken that position to determine that the amount of the refund should be less. That issue has not prevailed in other states, he said, though he considered it in his determination of \$64. million as the proposed amount for settlement.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 23, 1994.

The Chairman noted that the Governor has recommended reducing ending balances in FY 96 in order to avoid a tax increase and stated, in his opinion, ending balances were not sufficient to fund the settlement without increasing taxes.

The meeting was adjourned at 12:15 P.M.

The next meeting is scheduled for February 24, 1994.



# GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: Feb. 23, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Greg Tugman	Topeka	DOB
GORDON LONGABACH	LAURENCE	TROA (Jag) (Jag)
Summ McBraden	Topeka	elbarva
DON KOHL	DERBY	USAF RETIREE
ED Brown	Wichita	STATE PRESIDENT AIR FORCE Assoc.
Kit McGill	Topeka	Military Relates
John Friedman	Topeka	Military
MARY LOU MCDANIELS Mary Lou Mc Daniels	Wichita	SELF RETIRED US Navy
GARVIN B. MCDANIELS	WICHITA	US NAVY RETIRED
John J Federico	Topeka	McGill + Assoc
Jim Riley	Derby	Col USAF (Ret)
Bill Weedin	Wichita	USAF (Ret)
Cletus J. Pottebaum	Wichita	Col (USAF Ret)
Lillian M. Pottebaum	Wichita	Air Force Wife
Charles M Yunker	Topeka	American Legion (KS)
George Fittell	Topeka	AIR FORCE (Ret)
C L Comfort	Lansing	USMC (Ret)
Hollis B. Logan	Topeka	USAF, Retired
Kenneth J. Schartz	Topeka	USAF, Retired
Bill Rich	Topeka	Washburn Law School
Bill Richards	TOPEKA	USA (RET)
Lois Smith	Burlington	USN Ret dip
Diana Smith	Burlington	USN (Ret)
Steve Stotts	TOPEKA	Revenue
Nancy Parrish	Topeka	KDOR
Francine Hubmann-Harris	Topeka	AUSA
Helen Hines CDR USN RA	Topeka	MOWW
John W. Taylor Col (Ret)	TOPEKA	TROA
Patrick Hurley	Topeka	Echfe
Maxim Munkel	Topeka	USAF (Ret)
Pat Brannum	TOPEKA	USA (Ret)
Paul E. Muehring	Derby	USAF (Ret)
Jeff Brownell	Emporia	Senack
LEON E LICHTENWALTER, Jr	LEAVENWORTH	USA (Ret)



## GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: \_\_\_\_\_

[illegible]

STATE OF KANSAS

LANA OLEEN  
SENATOR, 22ND DISTRICT  
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

LEGISLATIVE HOTLINE  
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COMMITTEE ASSIGNMENTS

CHAIR: FEDERAL AND STATE AFFAIRS  
VICE-CHAIR: CHILDREN AND FAMILIES  
LEGISLATIVE EDUCATIONAL PLANNING  
COMMITTEE  
MEMBER: EDUCATION  
JUDICIARY  
LEGISLATIVE POST AUDIT  
KANSAS CHAIR: AMERICAN LEGISLATIVE  
EXCHANGE COUNCIL (ALEC)

TESTIMONY ON SENATE BILL 707

SENATE WAYS & MEANS COMMITTEE

FEBRUARY 23, 1994

Chairman Bogina & Members of the Committee:

Thank you for allowing me to submit written testimony on Senate Bill 707 following the recent hearing.

The legislature has an opportunity this session to rectify a long standing inequity issue concerning the treatment of military retirees on the issue of their income taxation. Our state has unlawfully taxed this class of Kansans since 1961, and the U.S. Supreme Court, in a unanimous decision, has ruled that our taxation scheme of taxing them, while exempting state and federal retirees, is wrong.

The Department of Revenue has been involved in litigation since 1989 on this issue, and the state's liability is of concern. I believe the Department's position, and their representation to the Kansas legislature, is misleading. The Governor has stone walled any workable refund compromise; therefore, twenty-one Senators offer, for your consideration, a compromise which could bring closure to the issue.

The bill's components may not be perfect, but they offer the four issues which seek resolution:

- 1) the class of military retirees who paid Kansas income tax from 1984-1991;
- 2) an amount of \$60 million dollars, to include attorney fees, which is \$20 - \$25 million less than estimates;
- 3) a multi-year payback to soften the financial burden;
- 4) an identified method of funding which alters the ending balances until the debt is paid.

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*SWAM*  
*February 23, 1994*  
*Attachment 1*

The state would still keep military taxes collected from 1961-1983. Components of the provisions in this bill could start as a good faith effort for Kansas to "settle the debt," restore fair treatment, and begin the policy issue once more on whose retirements are taxed and whose are exempt.

Our potentiality of liability of all taxes being refunded (\$80-\$85 million) plus the estimated \$17,000 per day interest is troublesome.

Since the suit is a non-option class, we can own up to the mistake, offer the settlement to the court, and see if it would be accepted. Other states have settled their due; Kansas should also try to resolve the issue.

I ask for your support of Senate Bill 707, or at least the opportunity to send the bill to the floor without recommendation, so that the sponsors can have the issue addressed by the Kansas Legislature.

Senator Lana Oleen

**TESTIMONY**

**OF**

**PETE MCGILL**

**OF**

**PETE MCGILL & ASSOCIATES**

**ON BEHALF OF**

**KANSAS MILITARY RETIREES**  
**FOR TAX FAIRNESS**

**PRESENTED BEFORE**

**THE SENATE**  
**WAYS AND MEANS COMMITTEE**

**FEBRUARY 23, 1994**

**RE: MILITARY RETIREMENT TAXATION**

*SWAM*  
*February 23, 1994*  
*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.

**QUESTIONS AND ANSWERS**  
**REGARDING**  
**THE ISSUE OF ILLEGAL TAX**  
**ON**  
**MILITARY RETIREE PENSIONS**  
**PREPARED BY**  
**PETE MCGILL & ASSOCIATES**  
**ON**  
**BEHALF OF**  
**KANSAS MILITARY RETIREES**  
**FOR TAX FAIRNESS**

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## QUESTIONS AND ANSWERS ON THE ISSUE OF ILLEGAL TAX ON MILITARY RETIREE PENSIONS

Several thousand Kansas military retirees have been fighting a court battle for the past several years to obtain refunds of the illegal income tax levied upon their retirement benefits by the State of Kansas. Most other states impacted by United States Supreme Court decisions since 1989 have already recognized the inequity and settled with the retirees in their states. Kansas remains one of only six states that continues to actively resist returning the money to which the retirees believe they are rightfully entitled.

After years of frustration and with encouragement from several legislators, the Kansas military retirees are now seeking a legislative solution to their problem. Because they have limited knowledge of the legislative process, they have asked Pete McGill and Associates to assist them in coordinating their efforts.

Several legislators have already asked us questions and several more who appear supportive say they would like more information about this issue. For that reason, we have prepared this information paper that will provide the answers to at least some of the questions that have been asked of us.

### QUESTION 1.

**WHAT WAS THE UNITED STATES SUPREME COURT DECISION RELATING TO MILITARY RETIREES?**

**ANSWER:** In the case of Barker versus Kansas, a unanimous United States Supreme Court invalidated the Kansas income tax on military retirement benefits. Because the benefits paid to state and local government employees were not subject to tax, the court concluded that the tax on military retirement benefits violated a federal statute which has been in existence since 1939.

### QUESTION 2.

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

**ANSWER:** Thus far, the following seventeen (17) states have either been ordered to pay or have agreed to pay refunds: Missouri, Colorado, Oklahoma, Iowa, Michigan, Montana, Utah, Oregon, Arizona, New Mexico, Arkansas, Kentucky, West Virginia, Louisiana, South Carolina, Alabama and Mississippi. Settlement discussions are also pending in Virginia and Wisconsin.

### QUESTION 3.

**WHAT HAVE THE KANSAS MILITARY RETIREES DONE TO DATE IN SEEKING A RESOLUTION?**

**ANSWER:** Kansas Military retirees have sought equal tax treatment in the legislature since at least 1971. Serious initiatives during the 1970s and 1980s failed to secure a legislative solution.

In 1989, Kansas military retirees filed a class action lawsuit which eventually resulted in a United States Supreme Court decision invalidating the Kansas income tax on military retirement benefits. Since the filing of the lawsuit almost five (5) years ago, the retirees have repeatedly attempted to settle the refund issue with the Department of Revenue. These efforts have been unsuccessful.

#### **QUESTION 4.**

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

**ANSWER:** According to computer information from the Department of Defense, approximately 21,000 veterans received military retirement benefits at a Kansas address between 1984 and 1991. For a variety of reasons, the Department of Revenue estimates that approximately 10 to 12% of these veterans did not pay state income tax on their retirement benefits. Consequently, approximately 19,000 retired veterans are directly affected by the tax refund issue.

#### **QUESTION 5.**

#### **DOES THE LEGISLATURE HAVE AUTHORITY TO RESOLVE THIS ISSUE?**

**ANSWER:** Yes, but only as long as a legislative solution is eventually approved by the court to resolve the class action lawsuit. However, the legislature has no authority to impose any compromise solution upon the veterans.

#### **QUESTION 6.**

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

**ANSWER:** Yes. The class action lawsuit has been certified under rules of procedure which empower the court to make binding adjudications of right and to approve a settlement after retirees are given notice and an opportunity to be heard. 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. Similar settlements have already been approved by courts in Arkansas, Alabama and Louisiana without difficulty.

#### **QUESTION 7.**

#### **WHAT ARE THE PROBABILITIES OF COURT APPROVAL OF A LEGISLATIVE SOLUTION ACCEPTABLE TO THE RETIREES?**

**ANSWER:** Excellent.



**QUESTION 8.**

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

**ANSWER:** Upon successful conclusion of the class action lawsuit, the lawyers representing the retirees will submit an application to the court requesting a fair and reasonable award of attorney's fees which will be equitably spread among those who benefit from any recovery. The court will hold a hearing, receive evidence, give retirees an opportunity to be heard, and issue an award based upon a variety of factors which must be considered in setting a fee which is fair, just and reasonable.

For your further information, an application for an award of attorney's 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's fees the retirees may be required to pay would be reduced on an equitable basis by the amount of any attorney's fees the State is required to pay.

**QUESTION 9.**

**IF THE TOTAL AMOUNT WAS APPROVED, WHAT IS THE MAXIMUM POTENTIAL LIABILITY TO THE STATE?**

**ANSWER:** The Department of Revenue's most recent estimate is between \$81 and \$85 million.

**QUESTION 10.**

**IF THE LEGISLATURE FAILS TO PROVIDE AN ACCEPTABLE LEGISLATIVE RESOLUTION THIS YEAR, IS THERE ANY POTENTIAL INCREASED LIABILITY TO THE STATE?**

**ANSWER:** Yes. Using the Department of Revenue's revised estimates of refund liability, each day of delay may ultimately cost the State approximately \$17,424.65 in statutory interest alone. Two more years of litigation means that the State's potential refund liability may swell from a current estimated maximum of \$85 million to \$97.72 million. At that point, there will be no possibility of compromise even though the refund liability will have increased dramatically.

In addition, several more years of litigation means that the State will also incur further expense for both legal and administrative costs. While the amount of such costs is unknown to us, it is likely to be substantial.

#### QUESTION 11.

**THERE HAVE BEEN NEWS ACCOUNTS OF EFFORTS BY THE MILITARY RETIREES TO ARRIVE AT A NEGOTIATED SETTLEMENT. WHAT ARE THE FACTS AND STATUS OF ANY SUCH NEGOTIATIONS?**

**ANSWER:** The retirees have unsuccessfully sought a negotiated settlement of the class action lawsuit since 1989. However, no state official was designated or authorized to pursue settlement discussions until the summer of 1993.

During August 1993, the Governor appointed Secretary of Revenue Nancy Parrish as the state's representative with authority to negotiate a settlement of the class action lawsuit. After several meetings and exchanges of correspondence between the parties, it became apparent in late November 1993 that the parties were too far apart to achieve an acceptable settlement. The veterans' final offer of 87.5 cents on the dollar (payable over two fiscal years) was rejected by the state as too high, and the state's final offer of 25 cents on the dollar was rejected as too low.

#### QUESTION 12.

**WILL THE RETIREES ACCEPT A SOLUTION THAT PROVIDES FOR AN AMOUNT LESS THAN WHAT THE DEPARTMENT OF REVENUE HAS INDICATED IS THE FULL POTENTIAL STATE LIABILITY?**

**ANSWER:** Yes. However, given previous difficulties that the retirees have had in pursuing settlement discussions with the Department of Revenue, they are reluctant to make any specific commitments until it becomes clear that the legislature is serious about achieving an acceptable solution.

**QUESTION 13.**

**WHAT IS THE DOLLAR AMOUNT AND PERCENTAGE THE RETIREES ARE WILLING TO ACCEPT IF IT IS LESS THAN THE FULL AMOUNT?**

**ANSWER:** See answer to Question No. 12.

**QUESTION 14.**

**IS THE DEPARTMENT OF REVENUE PURSUING EFFORTS TO ASSESS AND COLLECT BACK INCOME TAXES FROM RETIREES WHO REFUSED TO PAY THE ILLEGAL TAX FOR 1984 THROUGH 1991?**

**ANSWER:** While the Department estimates that 10% to 12% of retired veterans did not pay state income tax on their retirement benefits between 1984 and 1991, it has advised the court that the state will take no further action to assess or collect tax on military retirement benefits for tax years before 1992. However, the Department refuses to refund illegal taxes to those retirees who obeyed state law and paid the tax.

**QUESTION 15.**

**THE DEPARTMENT OF REVENUE ESTIMATES THAT ONLY 20% OF THE RETIRED VETERANS HAVE PRESERVED THEIR REFUND CLAIMS IN THE ADMINISTRATIVE PROCESS FOR TAX YEARS 1984 THROUGH 1989. WHY DIDN'T MORE RETIREES FILE OR PURSUE REFUND CLAIMS BEFORE NOW?**

**ANSWER:** During 1989, in a widely publicized ruling, the district court determined that retirees were not required to pursue or exhaust the administrative process in order to secure refunds. The significance of this ruling was repeated in another written decision of the court handed down in October 1990. The state never appealed from either of these rulings.

In addition, the Department of Revenue and at least one of its lawyers sent letters to retirees which advised them that "it has already been decided by the district judge that taxpayers . . . may seek to obtain refunds in the class action lawsuit instead" of the administrative process.

The vast majority of retired veterans reasonably relied upon the previous rulings of the district court and the representations of the Department of Revenue that it was not necessary for them to



pursue or exhaust the administrative process and that their refunds could be obtained in the class action lawsuit. For the Department to now contend that the refund rights of these retired veterans have been cut-off is unconscionable.

#### QUESTION 16.

**IF THE LEGISLATURE FAILS TO PROVIDE AN ACCEPTABLE SOLUTION THIS YEAR, WHAT THEN ARE THE OPTIONS OR PLANS OF THE RETIREES?**

**ANSWER:** The retirees will pursue their appeal of the district court's decision through the Kansas appellate courts and, if necessary, to the United States Supreme Court. Since the highest court in the land has already invalidated the Kansas tax on military retirement benefits and returned the class action lawsuit to state court for further consistent proceedings, the retirees firmly believe that the United States Supreme Court will protect the integrity of its previous unanimous judgment in the case.

In addition, retirees will pursue and exhaust the administrative process as a protective measure while the class action lawsuit is on appeal. Despite the Department of Revenue's position that 1990 and 1991 are the only years now open for the submission of refund claims, the lawyers for the retirees disagree and are encouraging all retirees to pursue claims for the entire period from 1984 through 1991. Since both the district court and the Department of Revenue previously told retirees that they did not have to go through the administrative process to obtain refunds, the lawyers for the veterans do not believe that their refund rights can be legally cut-off after the fact.

Failure to achieve an acceptable legislative solution this year which is approved by the court will likely mean several more years of litigation which has now been going on for almost five (5) years.

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**PREPARED TESTIMONY OF JOHN C. FRIEDEN BEFORE  
THE SENATE COMMITTEE ON WAYS AND MEANS**

**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

*SWAM*  
*February 23, 1994*  
*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



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

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?**

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

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?

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.



Testimony before the Kansas State Senate Ways and Means Committee, February 23, 1994, by Garvin B. McDaniels, Chief Petty Officer, U.S. Navy, Retired

Good morning Chairman Bogina 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 Senate Bill No. 707 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

*SWAM  
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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.

SENATE WAYS AND MEANS COMMITTEE  
TESTIMONY BY CHARLES M. YUNKER, ADJUTANT  
KANSAS AMERICAN LEGION  
ON SENATE BILL 707  
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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Attachment 5

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; SB 707 over any of the House Bills; or even HB 2865 over 2866; or 2892 over 3042.

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.