

Approved

Keith Roe
Date 2/13/90

MINUTES OF THE House COMMITTEE ON Taxation

The meeting was called to order by Representative Keith Roe at
Chairperson

9:00 a.m./~~p.m.~~ on February 12, 1990 in room 519-S of the Capitol.

All members were present except:
Representative Crowell, excused
Representative Roy, absent

Committee staff present:
Tom Severn, Research Department
Chris Courtwright, Research Department
Don Hayward, Revisor's Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Representative Martha Jenkins
Representative Alex Scott
Mark Burghart, General Counsel, Department of Revenue
Keith Farrar, Chairman, Board of Tax Appeals
Joseph Wujcik, National Association of Retired Federal Employees
Lynnie Samms, Retired Enlisted Association
Charles Dodson, Kansas Association of Public Employees
Marshall Crowther, Kansas Association of Public Employees
Mel Gray, Retired KPERs Committee for Kansas Association of Public Employees
Cedric Moege, Silver-Haired Legislature
Basil Covey, Kansas Retired Teachers Association

A motion was made by Representative Smith, seconded by Representative Harder to introduce a bill to increase the state sales tax rate from 4.25% to 4.35%. The motion carried.

Chairman Roe turned the attention of the Committee to SB 520.

Keith Farrar, Chairman, Board of Tax Appeals, reviewed the proposed legislation in SB 520, stating that passage of this bill would help County Appraisers and the Board of Tax Appeals.

Chairman Roe concluded the hearing on SB 520.

The Chairman turned the attention of the Committee to HB 2866.

Staff reviewed data summarizing the 50 states' income tax treatment of federal civil service retirement benefits. Sources for the table were a report by the Congressional Research Service of the Library of Congress, a report of the Federation of Tax Administrators, and unpublished data from a recent survey of the FTA. (Attachment 1)

Mark Burghart, Department of Revenue reviewed a Memorandum on HB 2866, and gave a basic explanation of the Davis v. Michigan case. Mr. Burghart briefly reviewed the class action suit filed and certified in Shawnee County District Court by military retirees. Mr. Burghart also stated that it is very difficult to pinpoint a fiscal note on this bill due to no breakdown on retirees by age. (Attachment 2)

Representative Martha Jenkins testified in support of HB 2866, stating that she had two reasons for requesting this legislation: (1) she wants to bring Kansas' taxing policy into compliance with Davis v. Michigan, (2) to cut our losses if it is determined that Kansas must comply with the Davis v. Michigan decision. (Attachment 3)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation

room 519-S, Statehouse, at 9:00 a.m.~~pm~~ on February 12, 1990

Joseph Wujcik, NARFE, testified that he sees problems with HB 2866. Mr. Wujcik addressed differences between military and civil service retirement contributions and years of service requirements. He also proposed an alternative method of taxation of all public retirement benefits. (Attachment 4)

Representative Alex Scott testified in opposition to the inclusion of new language in HB 2866, Sec. 1, para. VII, lines 12 through 16 of page 3, stating that it would impact on a number of military retirees who live near Ft. Riley and adjacent cities. (Attachment 5)

Lynn Samms, Retired Enlisted Association, testified in opposition to HB 2866, stating that they strongly recommend the review of SB 423 before making any alternate approaches to solving the equal taxation problem. (Attachment 6)

Charles Dodson, Kansas Association of Public Employees, testified in opposition of HB 2866, stating that lines 15 on page four through all of page nine are changes which serve to diminish benefits provided to KPERS retirants and members. (Attachment 7)

Marshall Crowther, KPERS, testified in response to a Committee question, stating that there are 4206 retirants age 62 or over receiving over \$8,000 annually - not including those who took early retirement.

Cedric Moege, Silver-Haired Legislator, testified in opposition to HB 2866, stating that the tax benefits are not being extended to the private enterprise pensioners in Kansas. Mr. Moege read his letter on "pension injustices" published in the Topeka Capital-Journal. (Attachment 8)

Mr. Moege also submitted a petition signed by retired pensioners of Kansas Power & Light Gas Service. The petition asked for fair and equal taxation of all retiree pensions. (Attachment 9)

Mel Gray, Chairman, Retired KPERS Committee for the KAPE, testified in opposition to HB 2866, stating that the Kansas Legislature in past years has repeatedly assured the KPERS retiree that he would never have to pay state income tax on his retirement pay and that was one of the fringe benefits of his employment. He also called attention to some factors which have been eroding the economic purchasing capabilities of the public service retiree in Kansas. (Attachment 10)

Basil Covey, Kansas Retired Teachers Association, testified that they oppose the part of HB 2866 that calls for taxing benefits of federal, state and local government retirees above \$8,000. (Attachment 11)

Chairman Roe closed the hearing on HB 2866.

A motion was made by Representative Lowther, seconded by Representative Fuller to recommend SB 520 for passage. The motion carried.

The minutes of February 8, 1990, were approved.

The meeting adjourned at 10:30 a.m.

HOUSE COMMITTEE ON TAXATION

DATE 2/12/90

NAME ADDRESS REPRESENTING

Dave Cunningham	Topeka	BOTA
Keith Farver	Topeka	BOTA
George Jacob	Topeka	AARP SW - Capital City Task Force
Basil Covey	Topeka	KRTA
Raymond E. Olson	Topeka	KCOA - KAPE
George Jacob	Topeka	AARP - Capital City Task Force
Stae Stoffs	"	Ruvenue
MARK A. BURSTALT	"	"
John D McNeil	"	Self
Lynnie P Lemma	336 W 1st JK/CS	The Retired Industrial Assoc
CHUCK STUART	Topeka	United School Admin's
Cedric Moege	Topeka	SHL - SE Topeka
Mary Quinn	Topeka	KAPE
Ken J. Christensen	Topeka	Retired State - 10/29/89
Julia F. Drayden	Topeka	Retired State 30
MARK T. ROBERTS	Topeka	RETIRED K.D.O.T
Robert K. Crow	Topeka	Retired Fed Govt
Ronald Whisler	Topeka	Retired Fed Employee - KAPE
Fern Bales	Topeka	Retired Fed. Govt.
Jim Savage	Topeka	Retired Federal Empl (NARFE)
Volene Knadell	Topeka	Spouse Retired Fed Empl.
Luella Knadell	Topeka	Retired Federal Empl (NARFE)
Dennis Rembalet	Topeka	Self Retired Fed. Empl

KANSAS LEGISLATIVE RESEARCH DEPARTMENT
 Room 545-N - Statehouse
 Phone 296-3181

February 12, 1990

TO: Representative Keith Roe

Office No. 112-S

RE: State Tax Treatment of Federal Civil Service Benefits

Shown below is a table which summarizes the states' income tax treatment of federal civil service retirement benefits. Sources for the table were a report by the Congressional Research Service of the Library of Congress and a report of the Federation of Tax Administrators, as well as unpublished data from a recent survey of the FTA. Generally, where an exclusion level is shown, benefits are taxable above that level.

State	Treatment	Qualifying Age	Exclusion Level
Alabama	Exempt		
Alaska	No Tax		
Arizona *			\$ 2,500
Arkansas *			6,000
California	Taxable		
Colorado *			20,000
Connecticut	No Tax on Earned Income		
Delaware			3,000
Florida	No Tax		
Georgia *			8,000
Hawaii	Exempt		
Idaho	Exempt	65	
Illinois	Taxable		
Indiana	Taxable		
Iowa *			2,500
KANSAS	Exempt		
Kentucky	Exempt	50	
Louisiana *	Exempt		
Maine	Taxable		
Maryland *	Partly Exempt	65	Eq./Soc. Sec.
Massachusetts *	Exempt		
Michigan *	Exempt		
Minnesota	Taxable		
Mississippi			5,000
Missouri *			6,000
Montana			3,600
Nebraska	Taxable		
Nevada	No Tax		
New Hampshire	No Tax on Earned Income		
New Jersey			10,000
New Mexico			3,000
New York *	Exempt		
North Carolina *			4,000
North Dakota *	Partly Exempt	50	5,000
Ohio	Taxable		
Oklahoma *			5,500
Oregon *			5,000
Pennsylvania	Exempt		
Rhode Island *	Taxable		
South Carolina *			3,000
South Dakota	No Tax		
Tennessee	No Tax on Earned Income		
Texas	No Tax		
Utah *			
Vermont	Taxable		
Virginia *			16,000
Washington	No Tax		
West Virginia *			2,000
Wisconsin *	Exempt if entered prior 1964		
Wyoming	No Tax		

* Law changed in response to Davis case.

SOURCE: FTA and Congressional Research Service, Library of Congress.

I hope this information is useful to you. If you have further questions please contact me.

Thomas A. Severn
 Principal Analyst

2/12/90



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

To: The Honorable Keith Roe, Chairman
House Committee on Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: February 12, 1990

Subject: H.B. 2866

Thank you for the opportunity to appear and comment on the legislation designed to equalize the state tax treatment of federal, state and local pensions. This memorandum will attempt to: (1) briefly review the decision of Davis v. Michigan, 489 U.S. ___ (1989); (2) explain the prospectivity doctrine and how it is expected to evolve in the months to come; (3) review the Missouri Supreme Court decision of Hackman v. Director of Revenue; (4) review the status of the Kansas litigation filed by military retirees; and (5) provide certain information regarding the equalization of tax treatment of pension income in other states.

DAVIS V. MICHIGAN

A retired federal civil service employee brought suit challenging the Michigan tax treatment of federal retirement benefits. Michigan income tax statutes allowed taxpayers who received retirement income from the state or any of its political subdivisions to deduct such income to the extent it was included in federal adjusted gross income. Taxpayers receiving income from other retirement systems (including the federal civil service system) could deduct up to \$7,500 on a single return and \$10,000 on a joint return.

The Supreme Court held that the Michigan income tax scheme violated the principles of intergovernmental tax immunity, as codified in the Public Salary Act of 1939. In 4 U.S.C. 111, the United States consents to state taxation of the pay or compensation of federal officers and employees, provided such taxation does not discriminate because of the source of the pay or compensation. The Court determined that retirement benefits constituted deferred compensation and thus were subject to the antidiscrimination provision.

Michigan conceded the taxpayer was due a refund for taxes previously paid as a matter of state law. The Supreme Court, therefore, found that any prospective relief should be determined by the Michigan courts and remanded the case. This relief could include either exempting federal retirees or taxing state retirees.

General Information (913) 296-3909

Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381

Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081

Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

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Attachment 2

For Kansas tax purposes, in order to withstand a challenge under 4 U.S.C. 111, it must be shown that "... the inconsistent tax treatment [between military retirees and state retirees] is directly related to and justified by significant differences between the two classes."

PROSPECTIVITY DOCTRINE

The Supreme Court did not address the question of whether refunds were due for taxes previously paid by federal retirees because Michigan conceded the refund issue as a matter of state law. A number of states have taken the position that the question of retroactive application of Davis should be held in abeyance pending the U.S. Supreme Court's further refinement of the prospectivity doctrine announced in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). In Chevron, the Supreme Court articulated a three-part test to determine whether a decision striking down an unconstitutional law would be given prospective effect:

1. A new principle of law must be established by overruling a statute upon which the litigants had previously relied;
2. Whether retrospective effect will further or retard the policies underlying the rule in question; and
3. Whether retroactive effect would produce substantial inequitable results.

Two cases currently pending before the U.S. Supreme Court should provide further instruction on the retroactivity issue. Both American Trucking Associations, Inc. et al. v. Smith and McKesson Corporation v. Division of Alcoholic Beverages and Tobacco, Department of Business Regulation, and Office of the Comptroller, State of Florida were reargued in December and should be decided during the spring.

MISSOURI AND OTHER STATES

At least twenty-three states have determined that their current system of taxing state, local and federal pension benefits will be affected by the Davis decision. Litigation has been commenced in at least 11 of these states in both state and federal courts. Missouri was the first state to decide the issue when its Supreme Court ruled on May 25, 1989. In Hackman v. Director of Revenue the Missouri Court held, as the parties conceded, that Missouri's system of taxation violated principles of intergovernmental tax immunity by favoring retired state and local government employees over retired federal employees. It also was determined that taxpayers were entitled to refunds under the Missouri statutory scheme. The Missouri scheme differs from the statutory refund scheme in Kansas.

A dissenting opinion chastised the majority for rushing into a mass refund of taxes. Judge Welliver also opined that based upon the criteria previously mentioned in Chevron concerning the prospectivity doctrine, the Davis decision should be applied prospectively in Missouri.

The U.S. Supreme Court has refused to review the Missouri decision.

KANSAS LITIGATION

A class action suit has been filed and certified in Shawnee County District Court. There are approximately 14,000 military retirees in Kansas. The refund exposure is \$50,000,000. Discovery has not commenced in the case. Several motions for summary judgment are outstanding and will be considered by the Court shortly. The Court has previously ruled against the Department on its motion to dismiss for failure to exhaust administrative remedies. In addition to the class action, numerous administrative appeals by retired military personnel are proceeding through the administrative appeals process.

LEGISLATION OF OTHER STATES

A number of states have enacted statutes affecting the taxability of pension benefits since the U.S. Supreme Court rendered its decision in Davis. Rather than exempting federal pensions from state taxation, most states have enacted legislation to tax all federal, state and local pension income above a certain threshold amount. Below you will find a list of some of the states that have amended their statutes in response to Davis. The list is not exhaustive.

<u>STATE</u>	<u>EXCLUSION AMOUNT</u>	<u>AGE LIMIT</u>	<u>EXCLUSION PHASE-OUT</u>
ARIZONA	\$2,500	No	No
ARKANSAS	6,000	No	No
*COLORADO	20,000	55	No
GEORGIA	8,000	62	No
IOWA	2,500	55	No
LOUISIANA	Exempt	No	N/A
MICHIGAN	Exempt	No	N/A
MISSOURI	6,000	No	Yes
NEW YORK	Exempt	No	N/A
NORTH CAROLINA	4,000	No	No
NORTH DAKOTA	5,000	50	No
OKLAHOMA	5,500	No	No
OREGON	5,000	62	Yes
*SOUTH CAROLINA	3,000	No	No
UTAH	None	N/A	N/A
*VIRGINIA	16,000	55	Yes
WEST VIRGINIA	2,000	No	No
WISCONSIN	Exempt (Pre '64 Pensions)	No	N/A

*Applies to private pensioners

H.B. 2866 would provide an \$8,000 exclusion from federal adjusted gross income for taxpayers 62 years of age or older for retirement benefits earned for employment with the federal, state or local government. Retirement benefits of all retirees under the age of 62 would be fully taxable.

The Department does not possess information to accurately estimate retirement pay for federal, state and local government retirees by age group. If one assumes that 40% of state, local and federal civil service retirees are under the age of 62 and 35% of military retirees are age 62 or older, the net fiscal impact, using a marginal tax rate of 4.5%, would be an increase of \$9.3 million in tax year 1990 income tax liability.

The estimated fiscal impact to each group of retirees would be as follows:

KPERS	\$3,000,000	Increase
Federal Civil Service	8,100,000	Increase
Military Retirement	(1,800,000)	Decrease

The exclusion of \$8,100 of retirement pay without an age limitation would be revenue neutral. This exclusion level would allow the retirement benefits of about 80% of KPERS retirees to be exempt from Kansas income tax. The 80% figure is based on information the Department has received from KPERS which shows retirees by amount of annual retirement income.

The estimated fiscal impact to each group of retirees at the \$8,100 exclusion level is as follows:

KPERS	\$ 650,000	Increase
Federal Civil Service	4,500,000	Increase
Military Retirement	(5,150,000)	Decrease

I would be happy to respond to any questions you might have.

State Tax Postures on Davis vs. Michigan

On Mar. 28, 1989, the U.S. Supreme Court, in the case of Davis vs. Michigan Department of Treasury, struck down a Michigan tax law that exempted from state income taxation, retirement benefits paid by the state and its political subdivisions, while subjecting retirement benefits of former federal employees to tax. The court ruled that the taxation of certain federal retirement benefits while exempting similar state benefits violates the "doctrine of intergovernmental tax immunity." The court ordered Michigan to refund taxes paid by the individual litigant; however, it refrained from extending that remedy to all recipients of federal retirement benefits. Instead the decision was remanded to the state courts for determination as to manner of implementation.

Some 25 states subsequently were identified as being potentially affected by this decision. Two "core" issues ultimately surfaced: affected states' compliance with the ruling for the "future" and retroactive refunds in affected states based on statutes of limitations. A further issue is whether statutes of limitations apply. State reactions have varied. Additionally, two cases (McKesson Corp. vs. Division of Alcoholic Beverages and Tobacco and American Trucking Assoc. vs. Smith) were argued before the U.S. Supreme Court in December which will impact on the refund issue. Although not relating to personal income taxes, the issue in each case was whether a state that has collected taxes subsequently held to be unconstitutional must refund those taxes.

State-provided reactions to the Davis vs. Michigan case, as pertaining to military retired pay, appear boxed at right. For most current information, contact state tax authorities.

—LCol E. S. Gryczynski, USA-Ret.
Director, Personal Affairs

Davis vs. Michigan State-by-State Listing

Alabama: Case has been filed contending that state tax laws violate standards established in Davis vs. Michigan.

Arizona: 1989 law change no longer exempts benefits, annuities and pensions received from the state, county or municipal retirement funds from state taxation. However, amended law allows up to \$2,500 subtraction from Arizona gross income for all public pension income. Current tax laws also allow a \$2,500 credit for military retirees. Statute of limitations for filing amended tax returns is four years (subject to certain exceptions). The state's posture on refund claims is that any refund request resulting from the Davis vs. Michigan case will be denied until the issue is resolved by the administrative hearing process, including the State Board of Tax Appeals and the courts. A decision has been rendered by a Maricopa County Superior Court judge that directs the state to reimburse federal annuitants for tax monies collected during the statute of limitation years.

Arkansas: Currently exempts the first \$6,000 of nondisability military retired pay. Although the state originally took the position that it was not affected by the Davis vs. Michigan ruling, a Nov. 1, 1989, ruling by the Sixth District Chancellor states that federal pensions have been inequitably taxed since 1985, and refunds are in order. The state has said that if refunds are paid, they will include interest. Statute of limitations is three years.

Colorado: For taxable years beginning on or after Jan. 1, 1989, \$2,000 exclusion has been repealed, \$20,000 exclusion has been established for all, but everyone (except secondary beneficiaries) must be 55 or older to claim a pension exclusion. State is accepting but not processing amended returns for years 1985-88 and will pay interest from the original due date if refunds are granted. Statute of limitations is four years.

Georgia: August law change conforms to Davis vs. Michigan. In 1989 tax year, for those older than 62, the first \$8,000 in military retired pay will be exempt; for succeeding years, exemption will be \$10,000. Statute of limitations is three years.

Iowa: 1989 legislation conforms to Davis vs. Michigan. To qualify for an exclusion, recipient must be disabled or older than 50. For qualifying recipients filing a joint return, the exclusion is the smaller of the taxable pension or \$5,000. For all others, the exclusion per taxpayer is the smaller of the taxpayer's taxable pension or \$2,500. State is accepting amended returns claiming refunds based on the Davis decision but not acting on such claims until the courts resolve the question of retroactivity. If refunds are due for periods before 1989, interest will be paid upon the tax refundable beginning 30 days after the original filing date, due date of the returns or date of payment, whichever is later. Statute of limitations is three years.

Kansas: Department of Revenue's position holds that current state statutes do not allow for the exemption of military retirement pay. At least two lawsuits seek a ruling as to the proper tax treatment of military retirement benefits. The Kansas Department of Revenue has encouraged individuals to file protective or amended claims to hold the statute of limitations until a final ruling has been made. Statute of limitations, for all tax years after Dec. 31, 1988, is three years. For tax years before Dec. 31, 1988, statute of limitations is four years. If refunds are granted, interest will be computed on the amount of refund at the rate of 1 percent per month from the original due date of the return or when actually filed, whichever is later.

Kentucky: Revision of tax code relative to government pensions and annuities not expected until 1990. Statute of limitations is four years.

Louisiana: The 1989

legislature exempted federal retirement income from state income tax for 1988 and subsequent years. Income tax paid on federal retirement pay for the 1988 taxable period plus accrued interest is refundable.

Taxpayers are required to file an amended 1988 individual income tax return requesting such refund. Income tax paid on federal retirement pay for taxable periods before 1988 is not refundable. However, the State Board of Tax Appeals recently granted permission for a class action suit to seek reimbursement for taxes paid under an "illegal" tax.

Maryland: State claims it is not affected by the Supreme Court ruling. Refund claims based on Davis vs. Michigan will be denied because "Maryland law does not discriminate between federal and state or local pensions." The Length of Service Award Program benefits, which are exempt from Maryland state income tax, pertain to volunteer fire and rescue personnel who receive payments from counties or municipalities based on their years of service as volunteers.

Massachusetts: State claims that applicable income tax statute does not violate the intergovernmental tax immunity doctrine as interpreted in Davis. Unlike Michigan law, the Massachusetts statute does not discriminate on the basis of the source of the benefits. The determining factor for the Massachusetts exemption is whether the retirement fund is a "contributory fund to which the employee has contributed." Statutory provisions treat retirement funds of the U.S. government and those of the state and its political subdivisions in the same way.

Minnesota: Since 1987 Minnesota tax laws have treated federal, state and local government pensions equally. Therefore, the Davis decision will not have any effect on Minnesota taxpayers for any tax year after 1986. In tax years 1985 and 1986 Minnesota law allowed all retirees 65 or

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Attachment 3

older with incomes less than \$28,000 to exclude as much as \$11,000 of pension income from state income tax. Thus for taxpayers who were at least 65 Minnesota's law did not contain any Davis-type discrimination in 1985 or 1986. If the retired taxpayer was younger than 65, the only pensions that could be excluded were those paid by state or local governments to retired firefighters, law enforcement or correction workers. Further, Minnesota holds that the state did not discriminate against retired military personnel in either 1985 or 1986 since retired military personnel would not be considered either federal correction workers, law enforcement officers or firefighters.

Mississippi: Potentially impacted by the Davis case. The legislature has not yet addressed the issue. The state is accepting amended returns but taking no action other than acknowledgment of receipt. As to possible interest on any possible refunds, current tax law provides that if an overpayment of tax as reflected on a return filed is not refunded within 90 days after the prescribed due date or the date the return is filed, whichever is later, interest at the rate of 1 percent per month shall be allowed on such overpayment computed for the period after the expiration of the 90-day period to the date of payment. Statute of limitations is three years.

Missouri: State tax law has been modified to allow a \$3,000 exemption, depending on filing status and state adjusted gross income, effective Jul. 1, 1989. On Jun. 29, 1989, the Administrative Hearing Commission ruled that the three-year time period for filing a refund claim begins on the actual date the original return was filed. The commission's decision is being appealed to the Missouri Supreme Court. To be safe, taxpayers are advised by the state to file their amended returns within three years after the actual date they filed their original

return. A copy of the W-2P and federal form 1040 should be filed with each year's amended return. Refunds are currently being issued to federal retirees on their 1988 amended returns. The expected completion date for the 1985, 1986 and 1987 amended returns is Sep. 1, 1990. Interest will be paid at a rate of 6 percent per year.

Montana: Before the Supreme Court ruling, the state taxed all military pensions the same. An exclusion of the greater of \$3,600 or the pension was allowed in arriving at an adjusted state gross income. Since the decision, and until the Montana legislature says differently, all military income will be fully exempt from Montana taxation; however, the filing of a return is still required. The issue of retroactivity involves state and federal constitutional considerations, many of which have been raised in litigation now pending in Montana and the U.S. Supreme Court. Until the Montana Department of Revenue has direction from these courts, no refunds will be issued for tax years ending Mar. 28, 1989, and earlier. Taxpayers who excluded federal pension income in excess of the \$3,600 exclusion on their 1988 returns will be assessed by the Department of Revenue. Refund claims filed with the Department of Revenue will be held in abeyance. If refunds are to be issued, taxpayers will receive interest at the rate of 9 percent per year to compensate for the delay. Statute of limitations is five years.

New Mexico: The state has decided, without legislative action, to exempt federal retirement benefits from income tax for the 1989 tax year. The state legislature is expected to address this exemption in 1990. Statute of limitations is three years.

New York: State amended its tax laws so federal retiree pension benefits are exempt from taxation on or after Jan. 1, 1989. In view of the effective date of this legislation, state will not grant refunds for any

period before Jan. 1, 1989. Those persons who have filed refund claims for prior years will receive a formal notice of denial, to include an explanation of all appeals rights. State's position on refund retroactivity may be affected by cases in the U.S. Supreme Court and New York State courts. If so, prior claims will be reconsidered. In the meantime, the state advises that those who have not filed refund claims for years before 1989 may wish to file protective claims as soon as possible. Refund claims must be filed within three years from the due date of the original return.

North Carolina: The state has amended its tax laws in 1989 to allow a \$4,000 exemption effective for taxable years beginning on or after Jan. 1, 1989. State holds that refunds are not due unless demand for refund was filed within 30 days of paying the tax and not the tax deadline date. State still studying the issue of retroactivity.

Oklahoma: Effective Jan. 1, 1989, the first \$4,500 of state, federal and military retirement pay is exempt. Oklahoma will accept refund claims for 1986, 1987 and 1988. However, there is no provision in the statutes to honor these claims until the courts render a decision. Statute of limitations is three years.

Oregon: The 1989 tax law amendment brought treatment of state retirees in line with that for federal retirees, allowing both groups the same \$5,000 exemption under the same qualifying circumstances. A class action suit is currently pending in the Oregon Tax Court for refunds for tax years before 1989.

Rhode Island: State contends that it treats all pension income equally under state tax laws. Therefore, the Davis decision does not affect refund claims filed by Rhode Island federal pensioners for tax years 1985 to the present.

South Carolina: Effective Jan. 1, 1989, state government retirees are taxed on retirement benefits in a

similar manner as federal retirees. Refund claims are being held in abeyance pending current litigation. Should refunds be paid, interest on refunds would also be paid. Statute of limitations is three years.

Utah: Late 1989 tax code rewrite by the state legislature allows a \$7,500 exemption on all government annuities for those 65 and older and a \$4,800 exemption for those younger than 65.

Virginia: The state has amended its tax laws to permit a graduated tax credit for retirees 55 or older with retirement income of \$40,000 or less phased in over three years. The law is effective Jan. 1, 1989. The state contends that the Davis case did not mandate refunds on a retroactive basis. Currently, five court cases are pending before the City of Alexandria Circuit Court seeking such refunds. If refunds to federal retirees are ordered by the courts, the General Assembly enacted legislation in 1989 to extend the statute of limitations for the filing of amended 1985 to 1988 income tax returns. Retirees would have one year from the final court decision on the refund issue to file refund claims with the Department of Taxation. Normal statute of limitations is three years.

Wisconsin: In 1989, the state legislature granted full tax exemption for those in the armed services as of Dec. 31, 1963, or those who were retired from the armed services as of Dec. 31, 1963. On Jun. 13, 1989, the Dane County Circuit Court enjoined the state from collecting any taxes from the above listed group for the years 1982 and forward. The Wisconsin Court of Appeals is now reviewing the validity of this preliminary injunction. Eligible persons must file individual refund claims with the Department of Revenue. Currently, claims for refunds may be filed only for years 1985 and after. The state will acknowledge receipt of the claim, but no further action is being taken at this time.

Ladies and Gentlemen of the committee my name is Joseph B. Wujcik and I am from Leavenworth. I am Vice President of Area 1 of Kansas State Federation of Chapters of the National Association of Retired Federal Employees and Legislation Chairman of the Leavenworth-Lansing Chapter, #27, of NARFE. I wish to address my remarks to what I see as problems concerning HB-2866 before you.

First we are surprised to find that this action is being taken prior to the resolution of the suit brought by military retirees which now is in the courts. As I understand it the Kansas Attorney General has expressed an opinion that military retirees differ from those of us who retired under KPERS, Railroad Retirement, Social Security, or the Federal Civil Service for 2 basic reasons, #1, That the military retirees did not directly contribute to their retirement fund as the others of us did and, #2, That the military retirees are eligible for retirement after only 20 years of service regardless of age whereas the other of us must meet both years of service and age requirements. These conditions are still true. Finally, while I have not heard this publicly discussed it is a fact that the military retirees differ substantially in that they enjoyed free medical care during service and enjoy this same free care after retirement whereas the others of us have had to and still do pay towards our health insurance coverage. We ask that you consider this and delay any action on this bill until the courts have ruled in this matter.

But, having said that I feel I should address this bill should you decide to proceed with it's consideration.

First of all as to the language beginning on line 12, Section 1 c, ^{VII} vii of the bill. I notice that the taxpayer must be age 62 to qualify for the deduction. I ask that the age be dropped or at least reduced. What about the retiree who becomes disabled and receives a disability retirement but is not age 62. They are now incapacitated, unable to continue gainful employment and thus increase their earnings but yet cannot reduce their taxes under this age requirement. Additionally with the possibility of closing of military bases there is the possibility also of forced early retirement that would cause the early retirement of Federal Civil Service employees regardless of their preference. Shall these retirees be denied this benefit even though they had no choice in their present status?

Also and I mentioned this to Representative Jenkins the past Saturday, it appears to this lay person that sub par viii would still permit the deduction of the entire annuity on the part of a Railroad Retirement Act retiree. Was that your intention? I understood that all retirees were to be treated equally.

Finally if this committee feels that they must proceed with this bill at this time I propose an alternative method of taxation of all public retirement benefits as follows:

Some years back the Federal Government adopted a plan to tax Social Security benefits. This plan established base amounts which if exceeded would cause up to 1/2 of the SS benefits to be taxable. We recommend that this committee consider a similar plan for all public retirement benefits.

2/12/90
Attachment 4

I am not a lawyer or a learned person and I find it difficult to propose language which would fit into what I consider a negative approach, ie, that amounts are to be deducted from the Federal Adjusted Gross Income, but nevertheless I will make the proposal in my own language with the knowledge that this committee has the expertise to adapt my proposal and to properly word it so as to fit in this particular place in the bill.

I recommend that the proposed language be changed to read

"For all taxable years commencing after December 31, 1989 amounts received by any taxpayer as public retirement benefits in whatever form which were earned from being employed by the Federal, State, or local governments or as Social Security benefits may be taxable depending on the amount of income and filing status. The amount taxable is the smaller of (1) One half of the net retirement benefits received, or (2) One half of the amount by which the sum of the modified Adjusted Gross Income plus one half of the net benefits exceeds the base amount for the taxpayers filing status. Base amounts are as follows:

\$25,000 if single.

\$25,000 if married and not filing a joint return and did not live with spouse at any time during the tax year.

\$32,000 if married and filing a joint return.

\$0 if married and not filing a joint return and did live with spouse at any time during the tax year."

Those of you who have had experience in how this Federal Income Tax is imposed on Social Security income can readily understand what I propose. If adopted this would require a revision of the existing K-40 and K-40FD tax forms and the establishment of a Benefits Worksheet for the purpose of arriving at the Kansas Adjusted Gross Income. For the worksheet I propose the following "Benefits Worksheet"

KANSAS PUBLIC BENEFITS WORKSHEET

- 1. ENTER AGI FROM FEDERAL RETURN _____
- 2. ENTER AMOUNTS RECEIVED AS PUBLIC RETIREMENT BENEFITS (SOCIAL SECURITY INCLUDING NON TAXABLE PORTION, RAILROAD RETIREMENT, ARMY, FEDERAL CIVIL SERVICE, KPERS, ETC. _____
- 3. SUBTRACT LINE 2 FROM LINE 1 AND ENTER RESULTS HERE. _____
- 4. COMPUTE 1/2 OF ^{AMOUNT} SHOWN ON LINE 2 AND ENTER HERE _____
- 5. ADD LINES 3 AND 4 AND ENTER RESULT HERE _____
- 6. ENTER BASIC AMOUNT
 \$25,000 if single.
 \$25,000 if married and not filing a joint return and did not live with spouse during tax year
 \$32,000 if married and filing a joint return
 \$0 if married and not filing a joint return and did live with spouse during tax year. _____
- 7. SUBTRACT LINE 6 FROM LINE 5 AND ENTER RESULT _____
- 8. DIVIDE AMOUNT ON LINE 7 BY 2 AND ENTER RESULT _____
- 9. TAXABLE RETIREMENT BENEFITS. SMALLER OF LINE 4 OR LINE 8 _____

I believe my proposal to be the fairest manner in determining the taxability of all public annuities regardless of their source. The \$8,000 exception stipulated in the proposed amendment is much too low. Kansas allows a Food Sales Tax Refund if the household income is \$13,000 or less. The amount of about \$13,000 is considered poverty level by many authorities, apparently including the State of Kansas since they allow that refund should the income be at or below \$13,000.

For your information the latest statistics I have at my disposal shows that 87.8% of Federal Civil Service Survivor Annuitants, 67% of Disability Annuitants, and 38.7% of Non-Disability Annuitants receive annuities of less than \$1,000 a month. A total of 92.8% of Survivors, 78.6% of Disability Annuitants and 53.2% of Non-Disability Annuitants receive less than \$1,200 a month.

I submit this proposal for your earnest consideration and will gladly attempt to answer any questions this committee may ask. Thank you for the opportunity to appear and the privilege of submitting this proposal.

Joseph B. Wujcik, Area 1 VP,
KANSAS FEDERATION OF CHAPTERS, NARFE,
1814 High Street,
Leavenworth, Ks., 66048

TESTIMONY TO COMMITTEE ON TAXATION

I rise to speak against the inclusion of new language in HB 2866, specifically Section 1, paragraph VII, lines 12 through 16 of page 3. This change would impact on a number of military retirees who live near Ft. Riley and adjacent cities.

Military retirees have for years paid taxes on retirement income, essentially as the single group of federal or state retirees so categorized. These military retirees ask to be treated to the same traditional benefits enjoyed by those groups.

Retired military personnel often are home buyers in the communities, are a resource to the community as a work force and their retirement income adds to the local economy via their purchasing power.

The benefits of having these people in the community adds personnel who have administrative skills applicable to civilian jobs. One Lt. General served on the city commission, another held a position as a bank officer, and a third was active on a board of a savings institution. We have had a series of retired senior officers below that rank serve our community on civic and social boards.

By relieving these people of what they percieve to be an unfair tax, we could compete with states such as Texas which has many attractions for retired military personnel and attracts not only retired officers but also retired enlisted men. And most of the enlisted men are E-7, E-8, and E-9 level retirees who cary skills and substantial retirement income altho nearly all must seek a second income.

2/12/90
Attachment 5

In the areas near military posts, we consider retired military personnel an economic resource. In considering HB 2866 bear in mind the attractiveness of Kansas tax treatment in retaining this resource.

ALEX SCOTT
Representative, 65th District

12 February 1990

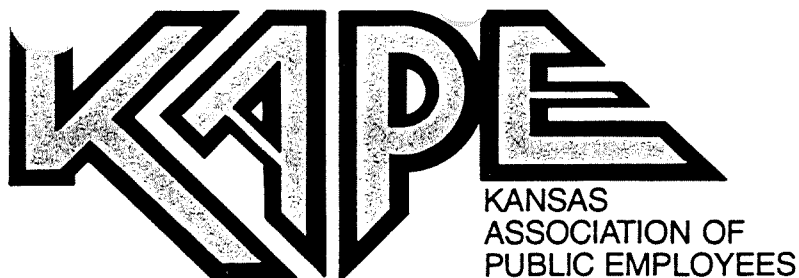
Honorable Keith Roe, Chairperson of the House Assessment and Taxation Committee.

Subject: House Proposal Regarding Equal Taxation of Public Retirement Income in the State of Kansas.

1. I am Linnie R. Samms, a military retiree and member of the Retired Enlisted Association Chapter in Junction City, Kansas.
2. The Military Retiree Community, through the Kansas Coalition of Military Associations, (Formed in July 1989, to combine the efforts of some 25 military associations in Kansas) had made their appeals to the Special Joint Assessment and Taxation Committee in August and October. We are strongly recommending that the proposed Senate Bill No. 423 be reviewed before making any alternate approaches to solving the problem of Equal Taxation of State and Federal retirement pay, as directed by the U. S. Supreme Court, to comply with the decisions made on the Davis vs Michigan case. We understand that the proposed Senate Bill No. 423 will be on the agenda of the Senate Assessment and Taxation Committee during the week of 26 February.
3. The Military Retiree Community, when meeting with the Special Joint Assessment and Taxation Committee, did not make any request that other Public Retirement regulations be changed. We were asking for exemptions equal to those granted other public retirement agencies.
4. The threshold of \$8,000 as well as the age limitation at age 62 is not realistic. A thorough analysis of action taken by the other 24 states dealing with the Davis VS Michigan case, will reveal that the thresholds being established are in the \$15,000 range. Also the age limitation of 62 is unrealistic and should not be specified.
5. The statement of the Secretary of the Revenue Department, that the Davis vs Michigan case does not apply to Kansas and that military retirees are not federal employees is erroneous. Since the adoption of the U. S. Constitution military personnel have been classified as Federal Employees. Twenty-four (24) other States have been working on this equal taxation problem, with the majority of them already complying with the U. S. Supreme Court directive.
6. The military retirees, in Kansas, have since 1974 made repeated appeals to the Governor and State Legislators, pleading for equal taxation of retirement income. Kansas did grant a tax credit of \$125 at the age of 62. This exemption never was appreciated by the military retirees. Furthermore, of 27 States granting exemptions, Kansas ranked in the lower four states in the nation. The military retirees in Kansas are now looking to our legislators to solve the situation and comply with the directives of the U. S. Supreme court.
7. Should other hearings be held the military retirees would appreciate being invited. Unfortunately, the hurried action taken by the House Assessment and Taxation Committee, limited the degree of participation in this hearing today.

Prepared jointly by: Linnie R. Samms Cletus J. Pottbaum
The Retired Enlisted Co-Chairman, Kansas Coalition
Association of Military Associations
336 W. 1st Street 6503 E. Murdock, Wichita,
Junction City, KS KS, 67206 (Tel. 316-683-3963)
66441 (Tel. 913-238-1770)

2/12/90 Attachment 6



Presentation to
Committee on Taxation
by
Charles Dodson
Kansas Association of Public Employees

Mr. Chairman, members of the Committee, thank you for this opportunity to appear in opposition to HB 2866.

The Kansas Association of Public Employees has members who are members of all the various retirement systems administered by KPERS. Therefore, the comments we wish to make will apply to all but we will refer only to KPERS for simplicity.

While this bill is assigned to this Committee on Taxation, everything from line 15 on page four through and including page nine are changes to the benefits provided under the retirement plans for state and local government employees. These changes serve to diminish the benefits provided to KPERS retirants and members. The retirement act sets up a wide ranging schedule of benefits. Among these benefits are a defined benefit program for retirants, disability income protection, lump-sum death benefit, and an exemption from state income tax payment on the proceeds from the retirement plan.

When "The Act" was written, it was intended that future and present retirees should not have to worry about any diminished benefits. If you will read beginning on line 19 of page seven of the bill, you will see this intent clearly indicated.

"No alteration, amendment or repeal of this act shall affect the then existing rights of members and beneficiaries but shall be effective only as to rights which would otherwise accrue under this act as a result of services rendered by an employee after the alteration, amendment or repeal."

In order to implement the provisions of this bill as found in K.S.A. 79-32,117, an alteration of "The Act" is necessary. The current law clearly states, that KPERS benefits and funds accruing to any person "...shall be exempt from any tax of the State of Kansas or any political subdivision or taxing body of the state;..." The best light one could shed on this alteration is that it would only apply to future service. To interpret in that fashion would cause the creation of a two-tiered retirement plan with any employee currently covered by KPERS having their



tax status determined by the number of years and their earnings prior to and after 1990. While that could possibly be accomplished, it would certainly be an administrative nightmare.

However, if the passage of this bill is indeed considered an "alteration", there are other factors to consider. During hearings in the Committee on Pensions, Investments, and Benefits and in the Senate Ways and Means Committee last year bills which would have diminished benefits for one group of participants in KPERS was challenged because of past determinations by the courts. In Singer v. City of Topeka the "contract" right of KPERS participants was established. It appears that the courts have determined that a lowering of benefits in one area violates that right unless a corresponding increase in benefits in some other area is provided. Information on other cases was also provided at that time to substantiate the contract rights of KPERS participants.

If the information we have on the contract rights is accurate, and we believe it is, then the only solution would be to again establish a two-tiered retirement program, one for current employees and one for future employees. This would be very disruptive and would create serious problems as new employees had to make the same contribution for lower benefits.

We understand that there are problems with the tax law which beg for attention. However, we do not believe that an alteration to the benefits provided through KPERS is the correct solution. In fact, it could conceivably lead to other equally distressing problems as retirants and active members of KPERS seek to protect their retirement program with the benefits it now provides.

District Representative — Retired
Aid Association for Lutherans

3045 Kentucky — Ph. 913-266-8922
Topeka, KS 66605

FREE ADVICE given on TAXES, GOVT., GOLF,
HUNTING, FISHING, GARDENING, ETC. ETC.

Pension injustices

Dick Snider in his satirical article of Nov. 24 used the words "rank injustice" to describe military retirees who pay state income tax.

No mention was made of an even greater "rank injustice" that requires all retired pensioners who receive their pensions from private enterprise to pay state income tax while those retirees who have drawn their salary from the public tax through all their working years pay NO state income tax on their pensions.

The legislative interim tax committee voted to exempt military retiree pay from state income tax. I predict that when private enterprise retirees from Goodyear, Boeing, KP&L, Fleming, Southwestern Bell, Stauffer Communications, etc., finally wake up to the "rank injustice" they are bearing that another class action lawsuit will be forthcoming.

There are three solutions to the problem. 1) Tax NO retiree pensions. 2) Tax ALL retiree pensions. Or 3) permit a basic tax exemption on all pensions whether public or private. One legislative member suggested that a basic tax exemption on all persons of \$8,100 yearly would be revenue neutral to present state income. His great idea died because of lack of a second to his motion.

I encourage all private pension retirees to contact their representatives and lobby to correct this unfair tax discrimination which is probably also unconstitutional. — CEDRIC MOEGE, Topeka.

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2/12/90
Attachment 8

We, the undersigned retired pensioners of Kansas Power & Light Gas Service hereby ask the Kansas Legislature to enact fair and equal taxation of all retiree pensions whether public or private.

We protest the granting of State Income Tax exemptions for KAPERS, FEDERAL and Military retirees and ask that the beneficiaries ~~of~~ private enterprise pensions be accorded fair and equal treatment under the law.

NAME	ADDRESS
Ina Jean Wanner	1910 Atwood
Phyllis H. Silkey	2741 SE 33rd St.
Ellen Marie Christensen	830 Ellinwood Osage City
E. lua Banning	511 NE Independence Topeka 66608
Alb & Engen Benjamin	5209 W 23 rd Terr Topeka 66611
Rep Robert Taylor	5413 SW 12th Terr Topeka 66608
Mary Jane Hamilton	4324 W. 17 th Topeka 66604
Donald E. Carter	2023 N.W. Winter 66608
Luille M. Carter	2023 N.W. Winter 66608
Dorechy Redman	1912 N Winter 66608
Harold D. Schooler	5017 SW 26 th St 66614
Robert E. Farrell	1809 Prairie Rd Topeka 66604
Myron D. Falk	1401 Ward Pkwy Topeka 66604
Wilma S. Falk	1401 Ward Pkwy Topeka 66604
Lloyd A. Salmon	1913 N. Winter Topeka 66608

2/12/90
Attachment 9

We, the undersigned retired pensioners of Kansas Power & Light Gas Service hereby ask the Kansas Legislature to enact fair and equal taxation of all retiree pensions whether public or private.

We protest the granting of State Income Tax exemptions for KAPERS, FEDERAL and Military retirees and ask that the beneficiaries ~~of~~ private enterprise pensions be accorded fair and equal treatment under the law.

NAME

ADDRESS

Charles E. Joet	2423 S.E. Indiana Ave, Topeka, Ks 66605
Robert M. Denton	1200 W 1 st Topeka Ks 66606
John C. Bergmeier	2121 SW 31 st Topeka, Ks 66611
Venona M. Bergmeier	2121 SW 30 th Topeka Ks 66611
Levante W. Newton	1200 W 2 nd Topeka 66606
Alice M. Joet	2423 S.E. Indiana Ave. Topeka, Ks 66605
James W. Bryan	1430 Sage Topeka / Ks. 66605
Therian E. Bryan	1430 Sage, Topeka, Ks. 66605
Wesley Roberts	3140 Mann Topeka Ks 66605
Arlene Roberts	3170 Mann Ave Topeka Kansas 66605
Mary R. Palmberg	1821 8 th Auburn Rd Topeka 66615
Earl H. Palmberg	1821 SW AUBURN RD TOPEKA 66615

We, the undersigned retired pensioners of Kansas Power & Light Gas Service hereby ask the Kansas Legislature to enact fair and equal taxation of all retiree pensions whether public or private.

We protest the granting of State Income Tax exemptions for KAPERS, FEDERAL and Military retirees and ask that the beneficiaries ~~of~~ private enterprise pensions be accorded fair and equal treatment under the law.

NAME

ADDRESS

Ralph L. Church	1003 Price Blvd. Atchison Kansas 66002
Margie B. Church	1003 price Blvd. Atchison, Ks. 66002
Louella H. Arklund	1608 S.W. 37 th apt 217 Topeka 66611
Wendell B. Arklund	1608 SW. 37 th apt 217 Topeka 66611
James D. Wallace	706 Grandview Topeka Ks 66606
Harnet E. Wallace	706 Grandview Topeka, Ks 66606
Charles E. Hill	1237 Bella Terrace Topeka, Ks. 66604
Norma Hill	1420 2 nd St. Topeka, Ks.

12 Feb. 19

HOUSE COMMITTEE ON TAXATION
Honorable Keith Roe, Chairman

Testimony On HB 2866
1990 Session

My name is Mel Gray, I am a state retiree, and I am chairman of the Retired KPERS Committee for the Kansas Association of Public Employees. Our membership is made up of retirees who were public service employees in Kansas.

We appreciate the opportunity to appear before you in relation to HB 2866. I must indicate to you at the beginning that we are opposed to the passage of HB 2866 and ask that you not enact legislation which would subject any portion of KPERS retirement pay to state income tax.

We believe that the Kansas Legislature has tried to be responsive to the needs of, and maintain the purchasing power of, KPERS retirees and for this we express our appreciation. We do want to call to your attention certain factors which have been eroding the economic purchasing capabilities of the public service retiree in Kansas.

The CPI (consumer price index) has exceeded the cost of living increases given the Kansas retiree for the past several years. Examples are as follows:

Year	CPI	Ks. COLA
1989	up 4.7%	up 4.0%
1988	up 4.0%	up 3.0%
1987	up 4.2%	up 3.0%

Additionally, the cost of health insurance has affected the retiree significantly. In 1988, 1989, and 1990 we incurred increases of 38%, -16%, and 47% respectively.

These are significant increased costs to all retirees and near disastrous to many. Many public service employees cannot afford to carry the so-called "medi-gap" health insurance to supplement medicare.

Growing old is one of the less desirable facts of retirement. If there are health problems, this only adds insult to injury. The cost of prescription drugs along with increased costs of health insurance deductables and co-insurance, in addition to reduced purchasing power as noted above, can be very significant to the retiree and certainly affect his well being.

The Kansas Legislature in past years has repeatedly assured the KPERS retiree that he would never have to pay state income tax on his retirement pay and that was one of the fringe benefits of his employment. Retirees have planned on this factor when reaching retirement age and we respectfully ask you to honor the previous legislative promise to maintain the tax free status of KPERS retirement pay as it relates to Kansas.

2/12/90
Attachment 10



Kansas Retired Teachers Association

Keep Retired Teachers Active

1989 - 1990



February 12, 1990

Members of the House Taxation Committee:

My name is Basil Covey and I represent the Kansas Retired Teachers Association.

We oppose part of HB 2866 that calls for taxing benefits of federal, state and local government retirees above \$8000.

We feel that the state made a mistake and should never have taxed any government pension. Now that there is a problem retirees are asked to give up a part of their pension.

If HB 2866 becomes law the state will be taxing retirees that have been supporting government with taxes longer than any other group of Kansas citizens. During their working years--40 to 50 years--paying taxes was a way of life. While this group planned well for their retirement, the state did not, and finds itself short of funds. The three-legged stool of retirement will find its legs cut shorter. Retirees are on fixed incomes and are "sitting ducks" for taxation.

Most retirees have material things they need, a home, car, furniture etc., but maintaining these things is the problem. Adding to that is maintaining the body. The eyes get weaker, hearing will be lost, and joints will need to be replaced. Maintaining the body and all its functions, the cost never gets less, increases the need to retain all pension benefits.

There are 4,400 KPERs members paying this tax. There are 2,000 retired teachers paying tax on their social security benefits by default. HB 2866, if it becomes law, will be done legally, not be default, as is the social security tax.

Court decisions kept the legislature pension from being resfnded or lowered. The same should apply to all KPERs members.

Other sources of revenue are available and we urge the committee to exercise that option.

Thank you,

Basil Covey
Basil Covey

Attachment 11

Dr. A.W. Dirks
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