

Approved Monday, March 19, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by SENATOR DAN THIESSEN at  
Chairperson

11:00 a.m./~~p.m.~~ on Tuesday, February 20, 1990 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Don Hayward, Revisor's Office  
Chris Courtwright, Research Department  
Tom Severn, Research Department  
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Senator Lana Oleen  
Lynn R. Samms, a Military retiree of 30 years.  
James E. Savage, Legislative Chairman for Jayhawk Chapter 374, Air Force Sergeants Ass'n. of KS  
James Trepoy, a Military retiree, and resident of Kansas  
Robert Bowden, a Military retiree, Salina, KS  
Darrell Bencken, St. Adjutant of the VFW  
Charles Yunker, representing American Legions  
Cletus Pottebaum, an Air Force Retiree, representing a coalition of Military Retiree  
Allen Adams, a KS Military Retiree  
Richard Wike, a KS Military Retiree  
Robert Cole, A KS Military Retiree  
Richard Shannon representing AARP  
Cedric Moege, Topeka taxpayer and member of Silver-Haired Legislature  
Mark Burghart, General Counsel, KS Dept. of Revenue  
Ralph Soebe, resident of Manhattan, KS

Chairman Thiessen called the meeting to order at 11:00 a.m. and said we would be hearing SB423 and he said because we have so many conferees at the meeting today he would like for each to limit their testimony to 3 minutes and we would be glad to accept written testimony from anyone not testifying.

SB423:AN ACT relating to income taxation; concerning military retirement benefits; amending K.S.A. 79-32-117 and repealing the existing section; also repealing K.S.A. 79-32,111b.

The Chairman recognized Senator Lana Oleen, sponsor of SB423.

Senator Oleen said SB423 is the result of Proposal No. 10 from the 1989 Special Committee on Assessment and Taxation. The bill was introduced in November, followed 6 months of interim study and updates and then was recommended - without dissenting voice -for consideration.

According to Senator Oleen, nearly a year ago, the United States Supreme Court ruled that state and federal employees must be treated equally. KS is among a number of states which does not treat its retirees equally. SB423 stops the unfair taxation of our KS retired military. It is not a retroactive bill, it is a stoppage of collection of tax...now.

Senator Oleen said she challenges this committee to be proactive in their taxation of KS state and federal retirees. She called upon the approval and support of the interim committee's recommendation.

The Senator turned in copies of an article from the Air Force Time, dated February 19, 1990 and the interim committee report. (ATTACHMENT 1a, 1b and 1c)

THE FOLLOWING ARE PROPONENTS OF SB423.

Lynn R. Samms a retiree after 30 years with the armed forces. SFC Samms said the military retirees since 1974 have made repeated appeals to the Governor and State Legislators pleading for equal taxation and if it had been granted then the state would not be facing the possibility of paying back anyone and instead would have not 16,000 but close to 25,000 retirees making the land of AHs their home of retirement.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 519-S, Statehouse, at 11:00 a.m./p.m. on Tuesday, February 20, 1990.

He said the government definition of a federal employee is taken from the federal employee hand book, and is (any person drawing a check from the U.S. Government). We the military retirees only want to be treated on equal basis as was granted by the St. of KS to the other 11 public retirement agencies. (ATTACHMENT 2)

James E. Savage, Legislative Chairman for Jayhawk Chapter 374 of the Air Force Sergeants Association said, his chapter members ask the committee to give favorable consideration to SB423 which would place military retirees on an equal footing with the tax treatment presently accorded to virtually all other classes of public service retirees, which include federal, state and local government, civil service retirees, retirees under the railroad retirement act, school teachers, state legislators, and all others who are retired under the KPERS system, all of whom are presently exempt from paying state income tax on their retirement pay.

He said, military retirees pay the same personal property and real estate taxes as everyone else, and their retirement pay received by present retirees in the state also is a terrific boost to the states economy since most of it is spent within the state and is subject to all state and local sales taxes. He said, they also contribute to the states welfare by providing innumerable hours of volunteer labor for various charitable, civic and patriotic organizations as well as continuing to pay the other taxes previously mentioned. (ATTACHMENT 3)

James Trepoy, retired from the military said some military personnel serve 20 or more years, pay income tax to Kansas all those years, not living in Kansas and not able to use or receive any of the benefits or services they have paid for, then have their government pension taxed when they retire.

Mr. Trepoy said attached to his testimony is a copy of the Public No. 32-76th Congress, Chapter 59-1st Session, H.R. 3700 AN ACT relating to the taxation of the compensation of public officers and employees. This act may be cited as the "Public Salary Tax Act of 1939. This provides that a duly constituted tax authority having jurisdiction to tax compensation for personnel service as an officer or an employee of a State, or any political subdivision thereof, or any agency or instrumentality may be taxed, if such taxation does not discriminate against such officer or employee because of the source of such compensation.

The State of Kansas does not tax federal civil service payments, nor does the state of Kansas tax state retirement benefits, such as KPERS and other similar programs. It is clear that the State of Kansas has singled out for taxation military retirement benefits, but has not seen fit to treat other Federal or Kansas retirement benefits in a similar fashion. Failure to do so, is clearly a discrimination against the military retirees because of the source of their compensation. (ATTACHMENT 4)

Robert Bowden a military retiree from Salina said equality is why we are here today, and all we are asking for, is equality. He said our forefathers fought against the unjust taxation levied against them in the beginning and now we must put up our fight. It recently came to public attention that the military retirees are paying State taxes on their pensions, where civil servants working for the State and Federal government do not. Based on the supreme court ruling "Davis vs Michigan" he said it is the retirees feelings that they had the State of Kansas in mind when they said, "If you tax one, you must tax everyone". We feel we have done enough and have asked very little in return and again, we are only asking for "Equality under the Law". (ATTACHMENT 5)

Darrell Bencken State Adjuthe VFW. He said, he has no written testimony but on behalf of his fellow veterans, they are in support of equal treatment on equal taxation.

Charles Yunker said he has no written testimony but would submit it later. He said he represents the American Legions and they rely upon resolutions to direct their bills on what they do, and it has come forward on this retirement issue, and has been the topic of discussion at their meetings and state conventions. The American Legion has a stand that the veterans are treated equal, especially on taxation, so therefore he said they are in support of SB423.

Cletus Pottebaum a retiree from the Air Force, and after 30 years he has a coalition called the Military Retiree Association in Kansas, and in behalf of the 16,489 retirees and widows in the state of Kansas he expresses their thanks for being invited here today. He said, the military retirees have, since 1974 in the State of Kansas made appeals for equal taxation. Since April 1989 we have renewed our appeals. The U.S.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,

room 519-S, Statehouse, at 11:00 a.m./~~P.M.~~ on Tuesday, February 20, 1990

Supreme Court, the case of Davis vs Michigan, we feel this applies to Kansas as it does to 24 or 25 other states in the nation. He said the date they presented to the Special Joint Assessment and Taxation Committee in August, has been provided to all State Legislators in a early September mailing, with a follow-up mailing in mid-October. We do hope that this date was helpful to informing the legislators of our situation and concern. He said the objectives of the military retirees in Kansas are: **(1)** Through Legislative action: seek equality in taxation of military retiree pay and surviving spouse benefits. **(2)** Request exemptions on taxation of retiree pay consistent with those policies now extended to other retiree personnel in the State of Kansas.

He said, they recommend for approval and adoption the proposed SB423. (ATTACHMENT 6)

Allen Adams said he has filed an amended Kansas return for 1984 and will file amendments for 1985 thru 1989 on April, 1990. There are approximately 14,000 military retirees living in our state and this could have a very serious impact on the budget if not dealt with in a very astute manner. However, there has been action taken that might very well cause a decision to be handed down from the Kansas Supreme Court that would be consistent with that of the U.S. Supreme Court; that type of decision could carry accrued interest.

He said, in order to reduce the budgetary impact for the State of Kansas he offered the following: **(1)** 1984 rebate to be credited to 1989 tax, **(2)** 1985 rebate to be credited to 1990 tax, **(3)** 1986 rebate to be credited to 1991 tax, **(4)** 1987 rebate to be credited to 1992 tax, **(5)** 1988 rebate to be credited to 1993 tax, **(6)** 1989 rebate to be credited to 1994 tax.

He said, any tax relief granted the military retirees could be offset by the taxation on the pensions of retirees under the present exemptions. (ATTACHMENT 7)

Richard Wike, is a military retiree and taxpayer living in Topeka, and he said, discrimination against the military is not conceivable, and also has no justice. No written testimony.

Robert Cole said he wanted to talk about veterans' pensions and federal annuities, including KPERS. He said, federal civil service personnel and KPERS contribute tax and contributions to their pension for retirement, whereas the military pensioners' provide service toward their retirement, when no tax up front are paid or remitted. In no way, can these two retirement plans be compared. Even so, he said he still supports SB423. Federal and KPERS contributions are invested and therefore we are drawing from those investments. His last point is, if SB423 should not be successful, he thinks it would be disastrous to think that the proposed option to it, where a portion of the tax would be imposed at \$8,000. and that would be discrimination against the senior retirees'. No written testimony.

Richard Shannon said he was representing AARP and he would be presenting written testimony at a later date. No written testimony.

### **THE FOLLOWING CONFEREES ARE OPPONENTS OF SB423**

Cedric Moege said he is a lifelong resident of Topeka and a member of the silver-haired legislature, and he said he is opposed to SB423 because these tax benefits are not being extended to the private enterprise pensioners' in our State. He said it is unfortunate that the military had to file a law suit, but he thanks them because they have pointed the way for private enterprise to get what they are asking. He said, his attachment includes a letter he wrote to the editor, with the Topeka newspaper. (ATTACHMENT 8)

Mark Burghart, General Counsel, KS Dept. of Revenue said he handout is basically from the study this past summer that studied this issue. He said he wanted to comment on the Davis vs Michigan case. He said a federal civil service retiree brought a suit in Michigan and challenged their system, basically state retirees were exempt and federal civil service were not. Michigan conceded that they owed refunds, so the Supreme court did not address that issue, since the State had conceded that point.

Some of these States where decisions have been rendered and refunds authorized, he said he thought, you should be careful as the State statute may be controlling those areas, because for instance, the Missouri statute states that you have to pay a refund if your Act is declared unconstitutional, it is an invalid levy. (ATTACHMENT 9)

CONTINUATION SHEET

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After committee discussion The Chairman asked if there were any other conferees that we have missed that would care to testify?

Ron Martin, Senior Vice Counsel, State of KS-Marine Corp League, said they support SB423 and he said as he listened to the testimony today, regarding the retirements they have earned and put into since 1929 when he entered the Marine Corp, one of the things told him that if he had stayed in, his retirement of \$55.00 a month which is not taxed, because they figure it is not worth it. He said he defends the constitution of the United States and the State constitutions and I also defend a mans right to oppose this bill, he felt Kansas should get back on the wagon. He said he would submit written testimony to the committee at a later date. No written testimony.

The Chairman thanked all the conferees today and said he appreciated the way in which they participated today.

Senator Francisco asked, if we enacted SB423 how many of the retirees here today would be satisfied and not wanting to go back and get rebates for prior years?

The retirees in the committee room felt as a majority they would have the State of Kansas in their hearts when it comes to their welfare and agreed they would not want to go back, but to go ahead.

Ralph Soebe from Manhattan said they talked it over this morning some said no and some said yes, but he thought if the taxes were stopped you would still get the majority of the military retirees support, and that would keep the State from paying back millions of dollars.

The Chairman concluded hearings on SB423 and adjourned the meeting at 12:20 p.m..

GUEST LIST

COMMITTEE: SENATE ASSESSMENT & TAXATION

DATE: Tuesday, 2-20-90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gordon B. Compton	110150, <sup>Wichita</sup> Parry KS 67207	USAF - TROA
Walter R BARRETT	6700 FARMVIEW, WICHITA	AFA - KANSAS
CIRIUS J. POTTEBAUM	4503 E. <del>Wichita</del> <sup>Wichita</sup> KS 67206	<del>Private</del> <sup>Private</sup> Assoc. <del>KS 67206</del>
Francis J. Taylor	3327 W. 99 <sup>th</sup> <sup>Lawrence KS</sup> <del>Wichita</del> 66206	Navy of Heart of America TROA (The Retired AFAs)
ALLEN D. ADAMS	8906 MARCH LAKE <sup>66207</sup> PRIMAIRE VILLAGE, KS	AFA <sup>Assoc.</sup>
Lynnie B. Dammz	336 W. 1 <sup>st</sup> JUNCTION CITY, KS	BANK of T. RET.
ROBERT L. BOWDEN	351 W. REPUBLIC SALINA, KS	CHAP # 16 TREA
JESSE L. MCGUAY	405 W. FRON SALINA, KS	CHAP # 14 TREA
EIBERT F. PRATER	819 E. CHAFFIN SALINA, KS	CHAP # 16 TREA
Agail Lathrom	1032 Lawrence, Ave. Lawrence, KS	U.S. AIR
Arthur M. Barton	Rte 3 Box 92A Lawrence KS 66044	USA RET
HENRY T. STAGATE	1552 SW 23 <sup>rd</sup> St TOPEKA, KS 66611	AF RET
JAMES W. SAVAGE	3219 KENT ST TOPEKA, KS 66614	AIR FORCE SERGEANTS ASSN - USAF (RET) -
Don Lindsey	OSAWATOMIE	UTU
L. Jones	"	BLE
John D. McNeal	Topoka	self
John F. Wilkum SR	Topoka	self
John Smith	Topoka	DOR
Kathleen Brungardt	"	"
GLENN L. SYMES	4335 SO E 26 TOPEKA, KS	USAF - TROA
ALLEN H. BLUM	2533 SW 85 <sup>th</sup> WAKARUSA, KS 66696	USAF RET TROA
Richard Shannon	12525 Leavenworth KEN 66609 RD	AFA RP
Cedric Maegle	3045 Kentucky, <sup>Topoka</sup> 66605	Private Pensioners
Ted Sanders	1038 W. Chestnut	Gr City Council
Herby WALTERS	Rt 1 Box 5217 MILFORD, KS 66654	TREA





SENATE  
HOUSE COMMITTEE ON TAXATION

DATE TUES 2-20-90

NAME	ADDRESS	REPRESENTING
Harold Pitts	Topeka	
Robert Clowe	Junction City	Self
Ray Libson	Topeka	ADDP
Ann McBride	Topeka	OK & driver
James C. Gregory	734 Maple, Salina	Retired Enlisted Officer
RON MARTIN	3200 SW 35 <sup>th</sup> TERR. TOPEKA	MACHINE GUNS LEAGUE OF KANSAS
Martin Lane	Junction City	Military Retired
ELMER GIBBERT	Topeka	<del>SELF</del> AFSA Military Ret.
Medwin Weaver	Topeka	AFSA Military Ret.
Raymond W Roy	TOPEKA	AFSP R.F. RET
Donald A. Fisher	Topeka	AFSA A.F. Ret.
JOHN P. DRAPER	TOPEKA	Military Retired
Frank E. Goder	Topeka	MIL RETIRE (TREA)
Harold Crager	Topeka	MIL RETIRE (Quas AFSA)
Darbert Hard	Topeka	Planet Revenue Assn.
James A. Dahl	Wichita	KS 77A
Dale Kuhn	Topeka	SMD
Merle E. Chaturwood	Topeka	F.P.A.
Charles M. Yunker	Topeka	American Legion
DANIEL BECKER	TOPEKA	UFW
Mark Sheeks	Lawrence	Sen. Parish
Edward J. Givinski SA	MAHASTAN	SELF
Mark S. Lively	Topeka	American Legion

LANA OLEEN  
SENATOR, 22ND DISTRICT  
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIRMAN: GOVERNMENTAL ORGANIZATION  
VICE-CHAIRMAN: CONFIRMATIONS

LABOR, INDUSTRY AND SMALL  
BUSINESS

MEMBER: ASSESSMENT AND TAXATION  
ECONOMIC DEVELOPMENT  
JUDICIARY

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SENATE ASSESSMENT & TAXATION COMMITTEE

TESTIMONY IN SUPPORT OF SB 423

February 19, 1990

Chrm. Thiessen, Vice Chair Langworthy & fellow Committee Members:

On behalf of the conferees who will appear before you today in support of SB 423, we thank you for the opportunity to share our thoughts with you.

SB 423 is the result of Proposal No. 10, directed to you from the 1989 Special Committee on Assessment and Taxation. This bill, introduced in November, followed six(6) months of interim study and updates and then was recommended - without dissenting voice - for your consideration.

The taxation of retired military pensions is not a new issue. For 17 years the Kansas legislature has wrestled with the issue; I believe the age of majority has arrived!

Nearly a year ago, the United States Supreme Court ruled in Davis vs Michigan that state and federal employees must be treated equally. Kansas is among a number of states which does not treat its retirees equally. The bill before you today stops the unfair taxation of our Kansan retired military. It is not a retroactive bill (which has a fiscal note of 50+ million dollars); it is a stoppage of collection of tax ... now.



Since the Davis vs Michigan decision, four states have defended their taxation policies, and all four states have lost their cases. I would like to point out that none of these states had legislatures which addressed the issue, and they are paying for it. The price tags: Missouri \$140 million; South Carolina \$200 million; Arkansas \$30 million; and Arizona the estimate is not available at this time.

The February 6, 1990 fiscal note, prepared under the signature of Ed Rolfs, Secretary of Revenue, addresses the legal impact in the following manner: "This bill, or any other legislation equalizing the income tax treatment of military benefits and KPERS retirement benefits is essential to the State's defense in current litigation with military retirees."

I challenge this Committee to be proactive in their taxation of Kansas' state and federal retirees. I call upon your approval and support of the interim committee's recommendation. I believe that SB 423 is fair and just in its treatment of our retired military personnel.

DRAFT  
November 27, 1989

**COMMITTEE REPORT**

**TO:** Legislative Coordinating Council  
**FROM:** Special Committee on Assessment and Taxation  
**RE: PROPOSAL NO. 10 -- TAXATION OF RETIRED MILITARY  
PERSONNEL\***

Proposal No. 10 -- Taxation of Retired Military Personnel, directed the  
Special Committee on Assessment and Taxation to:

Monitor the status of legal and administrative proceedings in  
Kansas and other states regarding the taxation of military retire-  
ment income; examine state tax treatment of retired military  
personnel in general, including any changes in federal law  
necessary to permit taxation of on-base sales.

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\*    B.    accompanies this report.

## Background

### Taxation of Retirement Income

Computation of the Kansas income tax begins with federal adjusted gross income. Thus, whether income is taxed in Kansas is often determined by whether it is subject to federal tax. However, several modifications to federal adjusted gross income are made in calculating Kansas adjusted gross income (KAGI).

Private retirement incomes are taxable. However, taxpayers may recover free of tax the amounts which they contributed from after-tax income. If, for example, a taxpayer contributes to his employee retirement plan, the taxpayer is entitled to receive a portion of his annuity free of tax so as to prevent the double taxation of income. The proportion is determined at the time of retirement and is the ratio of employee contributions to the expected value of the annuity. K.S.A. 79-32,117 (c)(iv), operates at the state level by excluding from KAGI:

"The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly

included in income or gain and was taxed under the laws of this state for a [prior] taxable year. . . ."

For those eligible (based on income), contributions to an Individual Retirement Account (IRA) are deductible from AGI when they are made; thus the contributions are made from before-tax income. All payments from an IRA (with the exception of roll-overs to new IRAs) are taxable when received by the taxpayer. Nondeductible payments to IRAs are now permitted and withdrawals of such amounts upon retirement will not be taxed.

Federal civil service annuities are deducted from federal AGI pursuant to K.S.A. 79-32,117 (c)(vii), which exempts "Amounts received as annuities under the federal civil service retirement system, from the civil service retirement and disability fund."

Social Security and railroad retirement are included in federal AGI only when modified AGI exceeds \$25,000 for a single taxpayer, \$32,000 for a married couple filing a joint return, or zero for certain married couples who live together but do not file a joint return. "Modified AGI" in this context includes tax-free interest and certain overseas income. Kansas taxes the Social Security benefits which are included in federal AGI, but does not tax the railroad retirement

income because 45 U.S.C. 231m bars state and local taxation of railroad retirement income.

Most state employees belong to the Kansas Public Employees Retirement System (KPERS). Annuities arising out of KPERS or the Police and Firemen's Retirement System are exempted from Kansas income tax by K.S.A. 74-4923. Within the KPERS law is provision for the State Board of Regents to contract for retirement annuity contracts with the Teachers Insurance and Annuity Association (TIAA) (K.S.A. 74-4925 (1)(a) and 75-2935 (1)(f)). Pursuant to these sections and Revenue Ruling 12-88-1, TIAA annuity income of faculty and others employed by the Regents is exempt.

Other state and local employees are exempted by other statutes. Judicial retirement incomes are exempt under K.S.A. 20-2618. Court reporters are exempt under K.S.A. 74-49,105. Retirement income from local units in Kansas are exempt pursuant to K.S.A. 79-32,117 (c)(ix). Highway Patrol retirement is exempt under K.S.A. 74-4978g.

#### **Taxation of Military Retired in Kansas**

In 1973 the Legislature amended K.S.A. 79-32,117 to exempt \$2,000 of military retirement benefits of taxpayers aged 65 or older.



As a result of a 1980 interim study, S.B. 2 was introduced to increase the exemption amount to \$3,000 and lower the qualifying age to 55. The Senate Committee on Assessment and Taxation amended the bill to lower the qualifying age to 62 and change the \$3,000 exemption to a \$120 credit -- an equivalent benefit at the 4 percent average marginal rate which then prevailed. The bill passed the Legislature and became effective in 1982. The credit was codified at K.S.A. 79-32,111b.

### **Davis v. Michigan**

On March 28, 1989, the U.S. Supreme Court announced its decision in the case Davis v. Michigan Department of Treasury (49 CCH S. Ct. Bull. B1861, 57 U.S.L.W. 4389). The decision held that under 4 U.S.C. 111, part of the Public Salary Tax Act of 1939, income tax exemptions for state employees are discriminatory if similar exemptions are not available to federal employees. The Court rejected the state's argument that the statute applied only to current income and not to retirement benefits. Since the state had conceded the issue in this case, the Court did not decide whether other federal retirees were due a refund.

Potentially large fiscal effects on some states are estimated to total \$500 million annually although the bulk of that represents taxes on federal civil service. Refunds could amount to four times the annual amount.

### Committee Activity

The Committee devoted part of each meeting to this proposal. Staff prepared a background memo and briefed the Committee on the Advisory Commission on Governmental Relations Report A-50, dated July, 1976, which recommended that state and local sales and excise taxes be extended to on-base commissary and exchange sales, and Department of Defense Directory 1330.9 (Armed Forces Exchange Regulations) which extends access to such exchanges and commissaries to military retired, unremarried spouses, and dependents.

The Department of Revenue briefed the Committee at each of its meetings on the status of the District Court case filed by several military retired asking for refunds back to tax year 1984. The Department also informed the Committee on the progress and nature of the administrative appeals process, and provided a summary of legislative responses of other states. The Department also provided fiscal notes for several possibilities. The estimated annual

cost of an exemption for military retirement pay is approximately \$7.5 million, according to the Department, and the fiscal note for allowing refunds back to TY 1984 would be approximately \$45-\$50 million. Finally, the Department provided a preliminary estimate that exempting only the first \$8,100 of public retirement income would be approximately revenue-neutral.

**Conferees.** The Committee received public testimony at its August meeting, and received limited additional testimony at its October meeting. Retired military conferees uniformly appealed for a prospective exemption of their income on the basis of fairness -- that all public retirees should be treated alike. Some conferees requested refunds back to TY 1984, but others expressed a willingness to forgo refund claims if a prospective exemption could be enacted. All expressed support for enacting legislation to achieve the exemption.

A representative of the Kansas Association of Public Employees opposed the taxation of Kansas state and local retirement incomes.

### Committee Conclusions and Recommendations

The Committee recommends that military retirement income should be exempted from state income tax beginning with TY 1989. The Committee considered but does not recommend that refunds be allowed for taxes paid in prior years. Also, the Committee considered but does not recommend that a portion of other public salaries be taxed. Enactment of S B. 423 will implement these recommendations.

Respectfully submitted,

\_\_\_\_\_, 1989

Rep. Keith Roe, Chairperson  
Special Committee on Assessment and Taxation

Sen. Dan Thiessen,  
Vice-Chairperson  
Sen. Jim Francisco  
Sen. Audrey Langworthy  
Sen. Phil Martin\*  
Sen. Don Montgomery  
Sen. Lana Oleen  
Sen. Marge Petty

Rep. Jayne Aylward  
Rep. Rex Crowell  
Rep. Cindy Empson  
Rep. LeRoy Fry  
Rep. Bill Roy  
Rep. Michael Sawyer  
Rep. Gene Shore  
Rep. Marvin Smith  
Rep. Joan Wagnon

\* Designated minority member.

# It's federal retirees 4, state treasuries 0

By Bennett Minton  
Times staff writer

WASHINGTON — Ten months after the U.S. Supreme Court's *Davis vs. Michigan* decision, most of the action translating the ruling into dollars for federal retirees has moved from the state houses to the court houses.

The early score is: federal retirees 4 state treasuries 0.

The latest retiree victory comes from South Carolina, where a trial court has ordered the state to pay tax refunds plus interest dating to 1985 to almost 44,000 civilian and military retirees.

State Judge Sidney Floyd of the 15th Judicial Circuit ordered South Carolina to submit a plan by March 20 to notify affected taxpayers and to establish a fund to pay the refunds. A tax commission official said the total could reach \$200 million.

Floyd cited a state law that allows refunds for "any tax erroneously, improperly or illegally assessed" and previous court decisions upholding it. Retirees in other states have based their cases on similar statutes.

South Carolina plans to appeal, probably to the state Supreme Court.

Among the other states whose courts have ruled, only Missouri has exhausted its appeals. The state estimates that by next January it will complete refunds dating to 1985, the last year under the statute of limitations. The \$140 million total is being funded by tax increases.

Missouri annuitants have until 1992 to file for refunds on 1989 taxes paid.

*The latest retiree victory comes in South Carolina, where a trial court has ordered the state to pay tax refunds plus interest dating to 1985 to almost 44,000 civilian and military retirees.*

Arkansas has appealed a state court ruling granting an estimated \$30 million in refunds. And an Arizona judge is expected to decide this month on a formula for returning taxes there.

## Situation in flux

The situation in the 20 other states affected by the high court's *Davis* ruling that states may not give more favorable tax treatment to state retirement benefits than to federal annuities remains in flux. Most have equalized their tax laws and all but two — West Virginia and North Dakota — report lawsuits by federal retirees seeking refunds.

The 24 states gave a variety of partial exemptions to state retirement benefits and fewer exemptions or none at all to federal retirees. All the states have opposed refunds, and many are watching two cases before the U.S. Supreme Court that could provide guidance.

Legislatures in Alabama, Arkansas, Kansas, Kentucky, New Mexico and Mississippi have yet to bring their laws into compliance with the high court ruling. Most of the rest either have given resident federal retirees the same tax break received by state pensioners or reduced the tax breaks for state retirees.

In Michigan, where the case began with federal retiree Paul Davis, the state appeals court has ruled that federal annuitants are exempt from state taxes back to 1968.

## 24,000 claims processed

The state since has processed most of the 24,000 claims of state retirees eligible. Retirees are appealing those rejected for being filed late.

Although the case had an impact on military retirees in other states, the ruling did not affect military retirees in Michigan because the state never had taxed military retired pay.

Most of the suits in state courts are based simply on state refund statutes, such as the one in South Carolina. However, plaintiffs in New York, North Carolina, Oregon and Wisconsin seek damages against tax officials personally, charging constitutional violations under federal civil rights laws.

Oregon retirees have filed an appeal with the state's high court to overturn a lower court's dismissal of their suit on a technicality; they still have not had a chance to argue the case on its merits.

The New York case is scheduled for a hearing this month. The North Carolina

suit is pending in federal court, and a Wisconsin court's preliminary ruling in the plaintiffs' favor has been appealed by the state.

Oregon has the most tangled legal situation. Retirees mounted a referendum campaign, gathering 65,000 signatures after the Legislature passed a law equalizing treatment of state and federal retirees but then arranging to return the exact difference to state pensioners through higher benefits.

Pending the November referendum, Oregon's old, unequal law remains in effect.

## Injunction issued

Although the Kentucky Legislature has not moved, a court granted a temporary injunction preventing the state from collecting unequal taxes from federal annuitants.

Georgia's withdrawal of tax benefits to state retirees prompted them to sue for breach of contract before the state Supreme Court.

"If we lose, we'll have to go back to exempting everyone," said state Attorney General Michael Bowers.

The states without pending suits — West Virginia and North Dakota — reported very small tax exemptions or very small classes of affected annuitants.

West Virginia's old law gave its state and local pensioners, as well as military retirees, a \$2,000 tax exemption. A new law extends the benefit to federal civilians, retroactive to 1989.

North Dakota gave tax breaks only to state police and firefighters, and that has been extended to federal retirees.



19 FEBRUARY 1990

TO: Honorable Dan Thiessen, Chairperson of the Senate  
Assessment and Taxation Committee.

Subject: Senate Bill 423 Regarding the Stoppage of State  
Taxes on Military Income.

1. I am Linnie R. Samms, a holder of the combat inf badge with two stars and served 30 years in the armed forces and proude to have served my country and my state of kansas. A past president of T.R.E.A. The Retired Enlisted Association chapter #4 in Junction City, Kansas.

2. First I want to Thank this Committee for hearing us to day and to SENCOR LANA OLEEN for the Dedication and Confidince she has in her Elected position and is working for the betterment of the people of kansas.

3. We the Military Retirees sence 1974 have made repeated appeals to the Governor an State Legislators Pleading for Equal taxation and if it had been granted then the state would not be faceing the possability of paying back any one and instead would have not 16,000 but close to 25,000 retirees making the land of AHs their home of retirement.

4. I would like to point out that in the Daves VS Michigan case that it was a Fedral employee that brought suit against Michigan because he was being taxed and the retired Military was not. That is why the statement that the Revenue Department is erroneus.

5. The Government definition of a Fedral employee is taken from the federal employee hand book is (ANY PERSON DRAWING A CHECK FROM THE U.S. GOVERMENT).

6. We the Military Retiree only wants to be treated on Equal base as was granted by the State of Kansas to the outhr  
11 public retirement agencies.

7. I thank that if SB 423 is signed in to law that you will find that we the Retired Military does have the well fair of our state in our hearts all that we want fair play.

THANK YOU AGAIN

SFC RET LYNNIE R. SAMMS

Mr. Chairman, distinguished Senators, ladies and gentlemen:

My name is Jim Savage, I live in Topeka, and I am the legislative chairman for Jayhawk Chapter 974 of the Air Force Sergeants Association. Our organization has approximately 550 members in the local chapter and about 1600 members in the state; we also have a goodly number of members in our auxiliary. I do not have the exact figures, but a majority of our members are retired Air Force personnel.

My chapter members desire that you give favorable consideration to this bill, which would place military retirees on an equal footing with the tax treatment presently accorded to virtually all other classes of public service retirees. This would include Federal, State, and local government civil service retirees, retirees under the Railroad Retirement Act, school teachers, State legislators, and all others who are retired under the KPERS system, all of whom are presently exempt from paying state income tax on their retirement pay.

While realizing the constraints imposed on this body by the State's present financial situation, we desire that the bill be passed in its present form with no amendments, if at all possible. We feel that in the long run the State will benefit from this treatment, which will encourage more military retirees to settle here permanently, rather than opt for retirement in states which accord more favorable tax treatment. Since military personnel tend to retire at an early age, they are rarely able to survive on their military retirement pay alone, but must seek other employment to supplement their income. Besides providing a valuable skilled labor pool for the the state to draw on, all outside income will continue to be fully taxable. Also, Retirees pay the same personal property and real estate taxes as everyone else. The retirement pay received by present retirees in the state is also a terrific boost to the state's economy, since most of it is spent within the state and is also subject to all state and local sales taxes.

Those military retirees who are no longer in the work force continue to contribute to the State's welfare by providing innumerable hours of volunteer labor for various charitable, civic and patriotic organizations, as well as continuing to pay the other taxes previously mentioned.

I thank you very much for allowing me to speak. Are there any questions?

James W. Savage

MSGT, USAF (Ret.)

Senate Assessment and Taxation Committee  
February 20, 1990 ATTACHMENT 3

SUBJECT: Taxation of Retired Military Pensions

TO: Committee on Assessment and Taxation

FROM: James C. Trepoy, 734 Max Ave., Salina, Kansas 67401

The Public Salary Tax Act of 1939, copy attached, provides that a duly constituted tax authority having jurisdiction to tax compensation for personnel services of an officer or employee of the United States or any agency or instrumentality may be taxed if such taxation does not discriminate against such officer or employee because of the source of such compensation.

The State of Kansas does not tax Federal Civil Service payments nor does the State of Kansas tax state retirement benefits such as KPERS and other similar programs.

It is clear that the State of Kansas has singled out for taxation military retirement benefits but has not seen fit to treat other Federal or Kansas retirement benefits in a similar fashion.

Failure to do so is clearly a discrimination against military retirees because of the source of their compensation.

Do you know that it is possible for a military person to serve 20 or more years, pay income tax to Kansas all these years, not live in Kansas, not able to use or receive any of the benefits or services they have paid for, then have their government pension taxed when they retire.

We military retirees are here to present our case for equity. We do not have high paid officials to come here to present our feelings as other pension plans may have.

I was present when President John F. Kennedy stated in his inaugural address; "Ask not what your country can do for you, but ask what you can do for your country". Some of us have served in three conflicts and many in two. Many hardships were encountered, with a loss of limb or life ever present. I would like to quote a poem, author unknown, that made the rounds in the Islands during World War II.

"God and the Soldier we adore  
In time of danger, not before;  
The danger over and all things righted,  
God is forgotten and the soldier slighted."

Many military retirees have mobilization orders calling them to immediate active duty if and when hostile action against United States is imminent. How better explained than by the many vehicles displaying the decal, "Still Serving, U.S. Army Retired".

1 Incl:  
as

[PUBLIC—No. 32—76TH CONGRESS]

[CHAPTER 59—1ST SESSION]

[H. R. 3700]

AN ACT

Relating to the taxation of the compensation of public officers and employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Salary Tax Act of 1939".

### TITLE I

SECTION 1. Section 22 (a) of the Internal Revenue Code (relating to the definition of "gross income") is amended by inserting after the words "compensation for personal service" the following: ("including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing").

SEC. 2. Section 116 (b) of the Internal Revenue Code (exempting compensation of teachers in Alaska and Hawaii from income tax) is repealed.

SEC. 3. Section 22 (a) of the Internal Revenue Code is amended by adding at the end thereof a new sentence to read as follows: "In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income".

SEC. 4. The United States hereby consents to the taxation of compensation, received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation.

### TITLE II

Sec. 201. Any amount of income tax (including interest, additions to tax, and additional amounts) for any taxable year beginning prior to January 1, 1938, to the extent attributable to compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing—

(a) shall not be assessed, and no proceeding in court for the collection thereof shall be begun or prosecuted (unless pursuant to an assessment made prior to January 1, 1939);

(b) if assessed after December 31, 1938, the assessment shall be abated, and any amount collected in pursuance of such assessment

1939

VINSON ACT  
SECTIONS

1st — 1940

2nd — 1940

SOCIAL SECURITY  
ACT

Ladies and Gentleman:

"We the people of these United States in order to form a more perfect union do here by establish and ordain this Constitution that by which all men are created equal."

Equality:

Equality is why we are here today at this meeting. Our forefathers fought against the unjust taxation levied against them in the beginning and to day we must put up our fight.

It has recently come to public attention, that the military retirees are paying the State taxes on their pensions - whereas civil servants working for the State and Federal government do not.

Based on the Supreme ' Court ruling "Davis vs Michigan" it is our feelings that they had the State of Kansas in mind when they said, "If you tax one, you must tax everyone."

All we ever asked for is Equality under the law. How would you feel if the State taxed your pension when you retire and no one else? And with taxing one and not the other you have un-equality or discrimination.

We have spent most of our lives serving our country. Laying our lives on the line to preserve our freedom and yours. And after all this for you, you cannot do this for us?

If our service to our country is not worth at least this much then I ask you, How much is it worth?

For we have done so much and in return have asked for so little of you. EQUALITY UNDER THE LAW!

Can you put a price tag on Freedom? How much is Freedom worth? If you had spent the better part of your life serving your country would you expect anything less?

We have never staged any protest marches or started any riots. It is our intention that this be settled in a peaceful and orderly fashion. It is up to you who make the laws to do away with a law that we feel is unconstitutional.

We feel that we have done enough and have asked very little in return.

I wish to thank you all for allowing me to add my voice to the many others that have asked the same thing. "EQUALITY UNDER THE LAW."

ROBERT BOWDEN  
Salina, KS



KANSAS COALITION OF MILITARY ASSOCIATIONS

6503 E. Murdock  
Wichita, KS, 67206  
20 February 1990

Subject: Taxation of Retired Military Pay in Kansas

To: Honorable Dan Thiessen  
Chairman, Senate Assessment  
and Taxation Committee  
The State Capitol  
Topeka, KS, 66612.

Dear Senator Thiessen:

In behalf of the 16,489 military retirees and widows of military retirees, in the State of Kansas, we wish to express our thanks for being invited to join your Committee today, to present our appeal for equal taxation of retirement income.

We also wish to express our thanks for being invited to join the Special Joint Assessment and Taxation Committee in August and October 1989. We greatly appreciate the work that was done to develop and propose Senate Bill number 423, which is now being reviewed by the legislators.

The military retirees in Kansas have since 1974 made appeals for equal taxation. Since April 1989, we have renewed our appeals. 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. The court ruled that the taxation of certain federal retirement benefits while exempting similiar state benefits violates the "doctrine of intergovernmental tax immunity".

Action was taken in August and October by the Kansas Coalition of Military Associations to present all the necessary data required by the legislators. The formation of the coalition is one step being taken to present a united position by representatives, who have been active in the various veteran associations. Just as veteran associations have formed a Coalition of Military Associations in Washington, D.C., so should they be formed at the State level. These members are volunteers, working for their respective associations, teaming up with their counter-parts to clearly present the case for military retirees and surviving spouses.

The data presented to the Special Joint Assessment and Taxation Committee in August, has been provided to all State Legislators in a early September mailing, with a follow-on mailing in mid-October. We do hope that this data was helpful to informing the legislators of our situation and concern.

The objectives of the military retirees in Kansas are:

1. Through Legislative action:
  - a. Seek equality in taxation of military retiree pay and surviving spouse benefits.
  - b. Request exemptions on taxation of retiree pay consistent with those policies now extended to other retiree personnel in the State of Kansas.

Collectives continued:

2. Through Judiciary action:

Seek refunds of military retiree taxes paid in calendar years of 1984, 1985, 1986, 1987 and 1988, which is consistent with the four year statute of limitations in the State of Kansas.

The annuities paid to widows of military retirees through the Survivor Benefit Plan and the Retired Serviceman's Family Protection Plan are also subject to state income tax. There are approximately 1,267 widows now living in Kansas. The proposed Senate Bill 423 should be amended to include widows to receive the exemption.

The proposed Senate Bill 423, ~~with the amendment to include annuities of widows,~~ is recommended for approval and adoption.

There are a number of military retirees who will answer any questions that members of the committee may have.

Thank you very much.

Sincerely,



Cletus J. Pottebaum

Co-Chairman

Kansas Coalition of Military Associations

Honorable Members of this legislative committee.

Let me introduce myself. I have been a resident of Johnson County since 1951 except 4 years that I resided in California. During this time I was flying military personnel to Vietnam. I entered the Air Corps in April, 1941 and served 4 years on active duty followed by 26 years of active Reserve duty in the U.S.A.F. making a total of 30 years able until my retirement. I receive an annual taxable pension from the Air Force, and I believe military retired pay should be tax exempt from Kansas income tax. This would be in conformity with the U.S. Supreme Court ruling in the Paul S. Davis, appellant versus Michigan Dept. of Treasury, dated March 28, 1989

I have filled an amended Kansas return for 1984 and will file amendments for 1985 thru 1989 on April, 1990

There are approximately 14,000 military retirees living in our state and this could have a very serious impact on the budget if not dealt with in a very astute manner. However, there has been action taken that might very well cause a decision to be handed down from the Kansas Supreme Court that would be consistent with that of the U.S. Supreme Court; that type of decision could carry accrued interest.

Recognizing that the legislature is faced with a very difficult situation at this time when they are looking at a severe budget shortfall; it seems proper for me to offer a suggestion of ways to lessen the financial impact on our budget and at the same time encompass the ruling of the Court.

1. A fair and equitable amount of Military and exempt Kansas pensions to be taxed above an amount to be determined by the Kansas Legislature consistent with commitments already made to those currently receiving pensions now exempt.

2. In order to reduce the budgetary impact I would offer the following:

1984 rebate to be credited to 1989 tax  
1985 rebate to be credited to 1990 tax  
1986 rebate to be credited to 1991 tax  
1987 rebate to be credited to 1992 tax  
1988 rebate to be credited to 1993 tax  
1989 rebate to be credited to 1994 tax

Any tax relief granted the military retirees could be offset by the taxation on the pensions of retirees under the present exemptions.

It will be my pleasure to answer any of your questions. Thank you for your kind attention and for the opportunity to meet with you.

*Allen D. Adams*

Allen D. Adams  
8906 Birch Lane  
Prairie Village, Ks 66207

Senate Assessment and Taxation Committee  
February 20, 1990 ATTACHMENT 7

Mr. Chairman and mem<sup>rs</sup> of the Senate Tax Comm.

PRONOUNCED - GEE

Cedric "Ced" Moege

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.

I am Cedric Moege, a lifelong resident of Topeka and a member of the Silver-Haired Legislature from SE Topeka for the last 3 yrs.

I am opposed to SB 423, not because of the benefits the military are asking, but because these Tax Benefits are not being extended to the private enterprise pensioners in our state.

LETTER TO EDITOR - 12-2-89

### 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.

SENATE ASSESSMENT AND TAXATION COMMITTEE  
TUESDAY, FEBRUARY 20, 1990 ATTACHMENT 8

② I have talked to 7 Private Enterprise retiree groups in Topeka and found the majority of these retirees seem to have little or no knowledge of the Tax-Free groups listed on Lines A7-849 and D-45 in the Kansas Income Tax Booklet. In their defense, it should be noted that this group of tax-jayers have NO lobbyists in their behalf like KAPERS, RTA, etc. also we have no funds to wine and dine legislators. A classic example of "Taxation without Representation"

③ The KPL Gas Service Retirees Club has signed 34 Members to a Petition submitted to some legislators and which has been read into the Senate Journal by Sen. Nancy Parrish. Others may follow

④ Last year on a modest annual pension of \$5,100<sup>00</sup> I paid \$203<sup>00</sup> state inc. tax. If my pension had been derived from a group in Lines A7-8 or 9, my tax liability would have been \$31<sup>00</sup>. Private pensioners would be happy to receive a tax-credit of 120<sup>00</sup> as do retired Military age 62 on Line D-45.

⑤ We are willing to accept a Base Exemption

for ALL pensioners, public or private, which would be revenue neutral to State Income. Example - Exempt the first 500 or 600<sup>00</sup> Monthly. A Pension Income of 500 or 600 Monthly should probably not be taxed, whereas the Retired General who said "I am ashamed to take my pension" - probably should be paying state income tax. The Supreme Court ruled recently that states could tax the pension benefits of retired military, federal and state workers or exempt those benefits, so long as all three classes were treated the same.   
→ therefor - the taxing of the 4<sup>th</sup> class of benefits, namely Private Pension Benefits is probably unconstitutional, since all classes are not being treated equally!



## 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 Dan Thiessen, Chairman  
Senate Committee on Assessment and Taxation

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

Date: February 20, 1990

Subject: S.B. 423

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Thank you for the opportunity to appear and comment on the legislation which would exempt military retirement benefits from state income taxation beginning in tax year 1989. S.B. 423 is a recommendation of the 1989 Special Committee on Assessment and Taxation. This memorandum is designed 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

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." It also is important to note that the case does not affect non-government pensions.

#### 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

SENATE BILL 423

S.B. 423 would exclude retirement benefits for service in the armed forces of the United States to arrive at Kansas adjusted gross income. The bill would be effective for tax years beginning after December 31, 1988. Passage of the bill would decrease State General Fund Revenue by about \$15.6 million in FY 1991.

According to the Department of Defense, in 1989 14,314 Kansas military pensioners received benefits totalling \$180.5 million. If all of the \$180.5 million is currently taxable, and using a marginal tax rate of 4.2%, the estimated reduction in tax year 1989 liability would be about \$7.6 million (\$180.5 million X 4.2%). Using a growth rate of 5% for military pensions from 1989 to 1990, and assuming the same marginal tax rate of 4.2%, the fiscal impact in tax year 1990 liability would be about \$8.0 million. During fiscal year 1991, military pensioners would be filing amended 1989 tax returns claiming refunds for their tax year 1989 military pensions, and filing their 1990 income tax returns less their military pensions benefits. The total impact to fiscal year 1991 is a reduction of \$15.6 million in State General Fund Revenues.

REVENUE NEUTRAL PROPOSAL

The exclusion of \$8,100 of retirement pay for military, federal and state retirees 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.