

Approved May 7, 1992

Minutes of the House Committee on Taxation. The meeting was called to order by Joan Wagnon, Chairperson, at 5:30 p.m. on Wednesday, April 29, 1992 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research; Don Hayward, Revisor; Linda Frey, Committee Secretary; Douglas E. Johnston, Committee Assistant.

Conferees appearing before the committee

The Chair brought up SB 215 for discussion and action. She briefed the committee on the Supreme Court decision *Barker vs. Kansas* which determined Kansas taxation of military retirement pensions to be unconstitutional unless all government pensions are treated similarly. A draft letter requesting an interim study was submitted to the committee (Attachment 1). It was suggested that the committee replace the current provisions of SB 215 with language that would codify the Supreme Court decision.

The committee discussed several options for codification and exempting military pensions from taxes. Rep. Eugene Shore suggested the committee consider language similar to that in a previous bill passed by the Legislature and lost to the Governor's veto which would tax all government pensions received by persons under the age of 62. He estimated the fiscal note for that bill was \$4 million.

The Chair said the *Barker* case was remanded by the Supreme Court to the Kansas courts to determine if the State of Kansas should refund and how much.

After speaking in favor of replacing the current provisions of SB 215 with language that would codify the Supreme Court decision by exempting military retirement pensions and certain non-military federal retirees not covered by civil service from taxation, Rep. Bob Vancrum made a motion to that effect. Rep. Kent Glasscock seconded the motion.

Tom Severn, Legislative Research Analyst, said SB 215 had been tabled.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 5:30 p.m. on Wednesday, April 29, 1992.

With the consent of the second, Rep. Vancrum withdrew his motion and Rep. Bruce Larkin moved, seconded by Rep. Steve Wiard, to take SB 215 from the table.

Rep. Vancrum renewed his motion, seconded by Rep. Glasscock.

Rep. Shore made a substitute motion to tax all government pensions above \$9,900. Rep. Vince Snowbarger seconded the motion.

Rep. Larkin spoke against the substitute motion. He said it was too late in the legislative session to hold hearings on the issue, but that he would support the idea at a later time.

Rep. Keith Roe and Rep. Jesse Harder spoke in favor of the substitute motion by Rep. Shore.

In response to a question, Rep. Shore said his substitute motion would make all government pensions subject to tax while exempting the first \$9,900.

Rep. Roe distributed a rough draft memorandum from the Department of Revenue regarding a revenue neutral proposal that would satisfy the requirements of the Supreme Court decision (Attachment 2).

The substitute motion of Rep. Shore failed on a tie vote.

In response to a question from Rep. Snowbarger and Rep. Roe, Steve Stotts, Department of Revenue, estimated an age threshold of 62 would be revenue neutral.

Burghart said 13 states tax all government pensions and 7 exempt all government pensions while the remainder utilize age and/or dollar thresholds to tax pensions. Missouri taxes all government pensions above \$6,000 while Colorado exempts the first \$20,000 and all persons above the age of 55 and Oklahoma taxes all government pensions above \$5,500. Burghart told the committee that in similar court cases lost by states, legislative action immediately after the Supreme Court decisions has been a factor in state court decisions regarding prospectivity.

Rep. Shore made a second substitute motion to tax all government pensions above \$10,000. Rep. Lowther seconded the motion.

Rep. Roe spoke in favor of the substitute motion.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 5:30 p.m. on Wednesday, April 29, 1992.

Rep. Larkin spoke in favor of using an age threshold, but did not favor the substitute motion of Rep. Shore.

Rep. Shore closed on his motion which carried with 13 affirmative votes.

Rep. Bob Krehbiel made a motion to exempt the first \$10,000 of all private and governmental pensions from taxation. Rep. J.C. Long seconded the motion.

In response to a question, Stotts guessed that exempting the first \$10,000 of all pensions would cost the state in excess of \$50 million.

Rep. Roe spoke against the motion of Rep. Krehbiel. He said such a change would make passage of the bill much more difficult and that differentiating taxation between government and private pensions has been determined by the Supreme Court to be constitutional.

Rep. Krehbiel closed on his motion by saying it is only fair to grant the pension income tax exemption to all taxpayers, not just government employees.

The motion of Rep. Krehbiel failed with 7 yes votes and 11 nos.

Rep. Shore made a motion to report SB 215, as amended, favorable for passage. Rep. Larkin seconded the motion which carried with 15 yes votes. Rep. Wagnon, Rep. Glasscock and Rep. Welshimer voted no.

The meeting adjourned at 6:15 p.m.

DRAFT

House Speaker Marvin Barkis
Chairman, Legislative Coordinating Counsel
Room 380-W Statehouse

Dear Speaker Barkis:

We are sending you this letter as a supplement to SB 215, which was passed as amended by this committee on Wednesday evening, April 29. As you know, that bill was amended to exempt military retirement income and certain other federal nonmilitary retirement income from the Kansas income tax prospectively, beginning in tax year 1992.

Given that the *Barker v. Kansas* decision by the U.S. Supreme Court was handed down prior to the veto session, we felt that codifying that decision was the simplest and most prudent course of action at this time. There are, of course, a number of other issues which have been raised by this decision which we feel would more appropriately be addressed during a summer interim study.

Other Ways to Equalize Tax Treatment

Among the issues which we believe should be studied are the various ways the state could provide equal tax treatment for all public sector pension benefits, including dollar-amount thresholds designed to be revenue neutral, age thresholds, and the possibility of taxing the benefits from only those plans which are noncontributory in nature. All of these methods have been used by the states in response to the 1989 *Davis v. Michigan* decision. The interim study would have the opportunity to study these options in far greater depth than this committee could during the veto session, and any recommendation for a change in the policy decisions in SB 215 could be made to the 1993 Legislature.

Prospectivity Doctrine

The other issue involves the question of whether the state should pay an estimated \$91 million in refunds to military retirees in interest and back taxes dating back through tax year 1984. The US Supreme Court has remanded this question back to the Kansas courts. The interim committee also could monitor this litigation and make any recommendations it felt appropriate to the 1993 Session. You may also wish to consider giving the Finance Council authority to pursue a settlement prior to the 1993 Session should it be in the best interest of the state.

In summary, we believed that SB 215 as amended represents the simplest and cleanest course of action at this point given the time constraints and myriad of other issues facing the Legislature during the veto session. But we do not want to close consideration of any of these other complex issues and believe that they should be addressed by an interim committee.

House Taxation
Attachment 1
04-29-92
House Committee on Taxation

STATE OF KANSAS

Steven A. Stotts, Manager
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1588



(913) 296-3081
FAX (913) 296-7928

Department of Revenue
Research & Revenue Analysis

MEMORANDUM

TO: Representative Keith Rowe
FROM: Steve Stotts, Manager *Stotts*
Research and Revenue Analysis
DATE: April 28, 1992
RE: KPERS, Federal Civil Service, Military Retirement Pay Exclusions

It is our understanding that you are interested in a revenue neutral proposal which would equalize the treatment of KPERS, federal civil service and military pensions for state income tax purposes. Our information reveals that the exclusion of \$9,900 of retirement pay for military, federal and state retirees would be revenue neutral. This exclusion level would allow the retirement benefits of about 90% of KPERS retirees to be exempt from Kansas income tax. The 90% 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 \$9,900 exclusion level is as follows:

KPERS	\$ 532,000	Increase
Federal Civil Service	4,915,300	Increase
Military Retirement	(5,454,900)	Decrease

Historically, legislation equalizing state pension treatment by taxing all pensions above a certain threshold amount is opposed by KAPE AND KPERS who contend that such legislation would interfere with the vested rights of a KPERS pensioner.

Please feel free to contact our office if you require any additional information.

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Attachment 2
04-29-92