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Proposal

DENNIS "BOOG" HIGHBERGER
46TH DISTRICT

TESTIMONY ON SUBSTITUTE FOR HB 2147

Before the Committee on Assessment and Taxation of the Kansas Senate

March 15, 2018

Chairman Tyson and Members of the Committee,

Thank you for the opportunity to testify as a proponent of Substitute for HB 2147, a bill which would require the Kansas Department of Revenue to refund state income tax payments that were improperly withheld from the military pay of Native American service members between 1977 and 2001. This issue has come to my attention only recently, but it is an important issue to me because a significant number of Native American veterans reside in my district.

It is my understanding that this situation arose from the interaction between a 1973 US Supreme Court decision¹ and a longstanding provision of the federal Soldiers' and Sailors' Civil Relief Act (SSCRA)². The Supreme Court case held that a state cannot impose its personal income tax on the income of Native Americans earned on their tribal land if they live on their tribal land, while the SSCRA provides that members of the military do not change their place of residence for state tax purposes by virtue of their military service. Therefore, a Native American service member who lived on tribal land in Kansas when he or she entered military service and did not change domicile after that would not be subject to Kansas income tax on his or her military pay.

Withholding for state income taxes from pay for military service began in 1977, but in most states no clear instructions were provided to eligible individuals on how to avoid state income tax withholding. A study in the State of New Mexico determined that it was likely less than \$2 million was improperly withheld from Native American veterans domiciled there, and the amount in Kansas is likely to be substantially less than that. The amounts owed to any individual may not be large, but could still be significant to many the eligible retired veterans.

The original bill provided for interest payments on the improperly withheld money at the statutory rate, but this provision was removed by the House because of concerns about the high rates of interest in the

¹ *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973).

² 50 U.S.C. § 571(a).

early years of the covered period. As many of you will recall, interest rates WERE high in the late 1970s and early 1980s, and if the veterans covered by this bill are going to be compensated for their actual losses, interest payments must be included. I would encourage you to add the provision for interest payments back into the bill so that this issue may be addressed in a conference committee. Otherwise, I am afraid that this issue will get lost and the affected veterans will never receive adequate compensation.

I would happy to try to answer to any questions you have.



G. A. Rusk