

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2147**

As Amended by Senate Committee on
Assessment and Taxation

Brief*

Sub. for HB 2147, as amended, would create a process by which certain Native American military veterans would be able to apply for a refund of state personal income taxes improperly withheld from such veteran's federal military income in the amount of income taxes paid plus interest.

Findings and Declarations

The bill would state the following findings and declarations:

- Native Americans have a long history of serving their country through active duty in the armed forces of the United States during periods of both war and peace and have made great sacrifices in fulfilling such duty;
- Native American veterans domiciled on their tribal lands during their periods of active military service may have been exempt from paying state income taxes on their military income, but may have had state income taxes improperly withheld from their military income; and
- Native American veterans are now barred by the statute of limitations from claiming refunds of state

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

income taxes that may have been improperly withheld from their military income and, even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that such veterans are entitled to a refund of improperly withheld state income taxes.

Refund

The bill would provide that on and after October 1, 2018, any Native American veteran domiciled within the boundaries of tribal lands in Kansas during the period of active military duty from tax years 1977 through 2001, and who had Kansas personal income taxes withheld from the veteran's federal military income, may apply to receive a refund of such income tax. The refund would be equal to the amount of the tax actually paid by the veteran, plus interest accrued during the period from the original due date of the return through September 30, 2018. No application for refund would be allowed after June 30, 2020.

Eligible Applicants Other Than Veteran

When a person eligible to receive a refund under this bill is deceased, the bill would allow an application to be made on behalf of the estate of the deceased, by a surviving spouse, or by any heir-at-law.

Fund

The Native American Veterans' Income Tax Fund would be created by the Director of Taxation (Director) within the Kansas Department of Revenue (KDOR). The fund would comprise moneys collected under the Kansas Income Tax Act in an amount determined by the Director as necessary to meet refund requirements provided by the bill. Any additional

moneys required for the fund would be transferred from the State General Fund and reported to the State Treasurer.

Report

On or before February 1, 2019, and February 1, 2020, the Secretary of Revenue would be required to report to the House Committee on Veterans and Military, the House Committee on Appropriations, and the Senate Committee on Ways and Means how the provisions of the bill are being administered, including the number of claimants receiving refunds and moneys expended.

“Native American” Defined

A Native American eligible to receive refunds under this bill would be defined as a member of the Prairie Band Potawatomi Nation of Kansas, the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, or the Sac and Fox Nation of Missouri in Kansas and Nebraska.

“Tribal Lands” Defined

Persons eligible to receive refunds under this bill would be defined as those domiciled within the following boundaries:

- *Iowa Tribe of Kansas and Nebraska.* Land as established by the treaty between the United States and the Tribe dated May 17, 1854, that is within the boundaries of the State of Kansas and does not include any land affected by the treaty between the United States and the Sauk and Foxes Tribes. No lands that have been or may be taken into trust by the United States may be included;

- *Kickapoo Tribe in Kansas*. Land granted in the treaty between the United States and the Tribe dated June 28, 1862;
- *Sac and Fox Nation of Missouri in Kansas and Nebraska*. Land granted in the treaty between the United States and the Tribe dated March 6, 1861, and ratified on February 6, 1863; or
- *Prairie Band Potawatomi Nation*. Land granted in Article 4 of the treaty with the Nation ratified on July 22, 1846, as modified by the treaties with the Nation ratified on April 15, 1862, and July 25, 1868.

Rules and Regulations

The Secretary of Revenue would have the discretion to adopt rules and regulations as necessary to administer the provisions of the bill.

Background

The bill was requested by Representatives Highberger and Victors during the 2017 Legislative Session. In the February 7, 2017, House Committee on Veterans and Military hearing, Representative Highberger and Representative Victors testified in support of the bill. Two representatives of the Prairie Band Potawatomi Nation also testified in support of the bill. Proponents stated legislation is necessary to compensate Native American veterans who had state income tax improperly withheld from their military income from 1977 to 2001. No other testimony was provided.

On February 14, 2017, the House Committee agreed to table the bill and the Chairperson created a subcommittee for the purpose of determining further action on the bill. The subcommittee reported to the House Committee on March 14, 2017, recommending KDOR and representatives of Kansas tribes work together to create substitute language to

be inserted into HB 2147 for the House Committee to consider. On January 16, 2018, the House Committee was briefed on the work completed by KDOR and interested parties during the 2017 Interim. A representative of KDOR appeared before the House Committee on January 25, 2018, and stated KDOR worked during the 2017 Interim with interested parties and determined a study is not necessary, and KDOR is prepared to issue refunds if legislation is enacted.

On January 30, 2018, the House Committee agreed to take the bill off the table and take it up for discussion. Following discussion, the House Committee created a substitute bill by removing the original contents of the bill proposing a study be conducted of the extent to which state income tax was improperly withheld, and by inserting language establishing a refund process.

The House Committee of the Whole had amended the bill on February 19 by disallowing the payment of interest on any refund awarded pursuant to the bill.

During the hearing in the Senate Committee on Assessment and Taxation on March 15, Representative Highberger and a representative of the Prairie Band Potawatomi Nation asked that the allowance of interest on refunds be restored to bring Kansas into conformity with how other states had handled similar refunds. The Senate Committee on March 20 amended the bill to restore the ability of eligible recipients to receive interest on the refunds.

During discussion in the Senate Committee, a representative of the KDOR explained the fiscal impact, which would be expected to occur primarily in FY 2019, would be estimated at \$253,000 with the interest provision restored (or double the \$126,500 that had been estimated under the House Committee of the Whole version).