

**79-32,193. Military retired personnel income tax settlement; refund amount calculation; military retirees income tax refund fund established; transfers to and expenditures from fund, when.** (a) The secretary of revenue is hereby authorized and directed to promptly negotiate, approve and recommend judicial approval of a settlement agreement to resolve all tax refund claims pending in the Barker class action for the amounts set forth in subsection (d). As used in this section, "Barker class action" means the consolidated class action styled Keyton E. Barker, et al. v. State of Kansas, et al., Nos. 89-CV-666 and 89-CV-1100, filed in the district court of Shawnee county, Kansas. The settlement agreement shall include:

(1) Any stipulations, terms and conditions which may be necessary to effectuate the prompt and final disposition of the Barker class action;

(2) stipulations that the plaintiffs in the Barker class action shall dismiss, with prejudice, their pending motion for an award of attorney's fees under 42 U.S.C. § 1988, and that class counsel in the Barker class action may submit one or more applications with the district court of Shawnee county, Kansas, for an award of reasonable litigation costs and expenses, including reasonable attorney's fees; and

(3) provisions for joint administration under the supervision of the secretary of revenue and class counsel or their respective designees in accordance with methodologies for the calculation and payment of refund claims to eligible persons. The settlement agreement shall be submitted to the district court of Shawnee county, Kansas, no later than June 15, 1994, and such court shall have all necessary jurisdiction to fully implement the provisions of this act.

(b) Subject to the provisions of subsection (c), any person who paid Kansas individual income tax on or on account of federal military retirement benefits for any or all of the tax years from 1984 through 1991 shall be entitled to receive refund payments in an aggregate amount equal to that portion of the tax actually paid pursuant to the Kansas income tax act which is attributable to federal military retirement benefits, plus interest on the amount of overpayment at the rate of 5% per annum from the date of overpayment through December 31, 1991, in accordance with the terms of the settlement agreement referenced in subsection (a) and the provisions of this act. Refund payments of such aggregate amount shall be made in three equal annual installments. As used in this section, "federal military retirement benefits" shall include all benefits calculated and paid by the United States in accordance with applicable provisions of title 10 and 14 of the United States code as retired pay, retainer pay or survivor's benefits. Where any person otherwise entitled to receive a refund payment under this section is deceased, such refund shall be paid upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by or on behalf of a surviving spouse and if none upon the claim of any heir at law.

(c) There is hereby created a military retirees income tax refund fund in the state treasury which shall be administered by the secretary of revenue in accordance with this section and appropriation acts. No expenditures from the military retirees income tax refund fund shall be made until and unless the settlement agreement referenced in subsection (a) is approved by the district court of Shawnee county, Kansas, after eligible persons have been afforded reasonable notice and an opportunity to be heard.

(1) In the event of judicial approval, administration of the military retirees income tax refund fund shall be subject to the jurisdiction and supervisory control of the district court of Shawnee county, Kansas, until such time as all refund payments have been made to eligible persons in accordance with the terms of the settlement agreement. The payment of refunds as provided in the settlement agreement shall represent a final and complete settlement of all claims, including any appeal or administrative process perfected pursuant to law for the purpose of obtaining a refund of income tax imposed upon federal military retirement benefits, of all federal military retired personnel for taxable years 1984 through 1991 against the state of Kansas, its departments, agencies, officials, employees and agents regarding the taxation of federal military retirement benefits for the taxable years 1984 through 1991. No claim for refund submitted by a federal military retired individual or, if such individual is deceased, on behalf of the estate of the deceased or, in the absence of any such claim, upon a claim by or on behalf of a surviving spouse and, if none, upon the claim of any heir-at-law, after 18 months from the date of judicial approval of the settlement agreement shall be allowed if due diligence has been exercised in attempting to locate any such individual. For so long as the judicial process is active in regard to the settlement agreement described herein, all administrative appeals or related activity by the director of taxation or the state board of tax appeals concerning claims for refunds of income tax imposed upon federal military retirement benefits for taxable years 1984 through 1991 shall be held in abeyance. Upon final judicial approval of the settlement agreement, all such administrative appeals shall be deemed dismissed with prejudice to all parties.

(2) In the event that the settlement agreement does not receive judicial approval, no expenditures or refund payments shall be made pursuant to this section, and all pending administrative appeals or related activities shall proceed in accordance with applicable law.

(d)(1) The aggregate amount, including interest thereon as provided by subsection (b), equal to that portion of Kansas individual income tax actually paid by all individuals for any or all of the taxable years 1984 through 1991, pursuant to the Kansas income tax act which is attributable to federal military retirement benefits, as calculated and determined pursuant to subsection (b), shall be certified on or before December 15, 1994, by the secretary of revenue to the director of accounts and reports.

(2) On December 20, 1994, the director of accounts and reports shall transfer the amount equal to 1/3 of the amount certified pursuant to paragraph (1) from the state budget stabilization fund to the military retirees income tax refund fund. On April 29, 1995, the director of accounts and reports shall transfer the amount equal to 1/3 of the amount certified pursuant to paragraph (1) from the state general fund to the military retirees income tax refund fund. On June 30, 1995, the director of accounts and reports shall transfer the amount equal to 1/3 of the amount certified pursuant to paragraph (1) from the state general fund to the military retirees income tax refund fund.

(3) Expenditures from the military retirees income tax refund fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of revenue or by the secretary's designee in accordance with the settlement agreement referenced in subsection (a) as approved by the district court of Shawnee county, Kansas.

(e) If any subparagraph, paragraph or subsection of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional subparagraph, paragraph or subsection.

**History:** L. 1994, ch. 345, § 1; L. 1995, ch. 226, § 35; L. 2008, ch. 109, § 116; L. 2014, ch. 141, § 123; July 1.