

Proposed Substitute for HOUSE BILL NO. 2147

By Committee on Veterans and Military

AN ACT concerning income taxation; relating to refunds, certain Native American veterans.

WHEREAS, 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; and

WHEREAS, 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

WHEREAS, Native American veterans are now barred by the state statute of limitations from claiming refunds of state 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.

Now, therefore:

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) On and after October 1, 2018, any Native American veteran who was domiciled within the boundaries of such veteran's tribal lands during the period of active military duty from the tax years 1977 through 2001, and who had Kansas personal income taxes withheld from such veteran's federal military income may apply to receive a refund as provided in this section. An application for refund shall be made to the director of taxation upon a form furnished

by the director. Such refund shall be equal to the amount of the tax actually paid pursuant to the Kansas income tax act that is attributable to federal military income, plus interest on the amount of overpayment at the rate prescribed by K.S.A. 79-2968, and amendments thereto, from the due date of the original income tax return through September 30, 2018. When 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.

(b) A fund designated as the Native American veterans' income tax refund fund shall be set apart and maintained by the director of taxation from the moneys collected under the provisions of the Kansas income tax act and held by the state treasurer for prompt payment of refunds as provided by this section. The fund shall be in such amount as the director determines is necessary to meet refund requirements under this section. In the event such fund is at any time insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funding required to the director of accounts and reports, who shall promptly transfer the required amount from the state general fund to the Native American veterans' income tax refund fund and notify the state treasurer, who shall make proper entry in the records.

(c) On or before February 1, 2019, and February 1, 2020, the secretary of revenue shall report to the house committee on veterans and military, the house committee on appropriations, and the senate ways and means committee on how the provisions of this section are being administered, including the number of claimants and the moneys expended.

(d) No claim for refund under this section may be submitted by a Native American veteran or, if such person 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 June 30, 2020.

(e) The secretary of revenue may adopt rules and regulations necessary to administer the provisions of this section.

(f) As used in this section: (1) "Native American" means a member of the Prairie Band Potawatomi Nation in 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; and

(2) "tribal lands" means:

(A) For the Iowa Tribe of Kansas and Nebraska, only the land that comprises that portion of the Tribe's reservation as established by the treaty between the United States and the Tribe dated May 17, 1854, that: (i) Is within the boundaries of the state of Kansas; and (ii) is unaffected by the treaty between the United States and the Sauk and Foxes Tribes dated March 6, 1861, to the extent such treaty reduced the land set aside for the Tribe pursuant to the prior treaty dated May 17, 1854, and specifically excludes any portion of the Tribe's reservation that is not within the boundaries of the state of Kansas. For the purposes of this section, the Tribe's land shall also not include any lands that are inside the boundaries of the state of Kansas, but are outside the boundaries of the Tribe's reservation established by the 1854 treaty that have been or may at any time be taken into trust by the United States;

(B) for the Kickapoo Tribe in Kansas, only the land granted in the treaty between the United States and the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas dated

June 28, 1862;

(C) for the Sac and Fox Nation of Missouri in Kansas and Nebraska, only the land granted in the treaty between the United States and the Tribe dated March 6, 1861, and ratified on February 6, 1863; or

(D) for the Prairie Band Potawatomi Nation, only the land granted in Article 4 of the treaty with the Potawatomi Nation ratified on July 22, 1846, as modified by the treaties with the Potawatomi Nation ratified on April 15, 1862, and July 25, 1868, respectively.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.