

STATEMENT OF VIVIEN OLSEN, GENERAL COUNSEL  
PRAIRIE BAND POTAWATOMI NATION  
SENATE ASSESSMENT AND TAXATION COMMITTEE  
Regarding HB 2147  
March 15, 2018; 9:30 am  
Rm. 548-S

Good morning Chairwoman Tyson and members of the Senate Assessment and Taxation Committee. My name is Vivien Olsen, General Legal Counsel for the Prairie Band Potawatomi Nation. The Prairie Band's government is located on the Potawatomi Nation Reservation in Mayetta, Kansas. The Prairie Band supports this legislation that honors and recognizes the Native American veterans who provided this country with their military service and who may have been erroneously taxed on that military compensation during the period 1977-2001.

With the passage of HB 2147, Kansas would be the third state in the Nation following Arizona and New Mexico, to enact legislation that refunds withheld state income tax earned by tribal member veterans domiciled on their reservation during their active military service. Kansas has four federally recognized resident Indian tribes: the Iowa Tribe of Kansas and Nebraska, the Sac and Fox Nation of Missouri in Kansas and Nebraska, the Kickapoo Tribe in Kansas and the Prairie Band Potawatomi Nation.

The impetus for HB 2147 is that Kansas income tax was withheld from Native American's military wages that are exempt from Kansas income tax. The exemption from Kansas income tax is the result of two matters of law. The first is a 1973 decision of the U.S. Supreme Court 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. (See *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973)). The second is the provision of federal law that members of the military do not change their place of residence for state tax purposes by virtue of their military service. (See Section 571(a) of the Soldiers' and Sailors' Civil Relief Act, and the November 22, 2000 Memorandum for the General Counsel, Department of Defense, "State Taxation of Income of Certain Native American Armed Forces Members" (Appendix B)). Thus, Native Americans who resided on their tribal lands when they entered military service and did not change their residency while serving in the military are not subject to Kansas income tax on their military pay.

Withholding of state income taxes by the federal agencies is governed by federal law that was amended in 1976 to require the U.S. Department of Defense to withhold state income taxes from military pay once a state had entered into an agreement for such withholding with the U.S. Department of the Treasury. On July 1, 1977, the State of Kansas first entered into an agreement with the U.S. Department of Treasury to withhold Kansas personal income taxes from military pay. (See Vol. 1, Part 3, Chapter 5000 of the Financial Manual of the U.S. Department of the Treasury)

In 2008, the New Mexico Legislature created the Native American Veterans Income Tax Settlement Fund (NAVITS) that made settlement payments to Native American veterans whose claims would be otherwise barred by the statute of limitations.

In 2016 the State of Arizona followed suit and established the Native American Veterans Income Tax Settlement Fund to refund Arizona income tax withheld from Native Americans who served in the military while claiming tribal lands as their domicile.

HB 2147 is created for the same purpose- to refund with interest the taxes erroneously and illegally withheld from those Kansan Native Americans domiciled on their reservation in Kansas while in military service during the years 1977-2001.

New Mexico and Arizona created the settlement fund from appropriations. The Kansas bill does not require an appropriation and refunds would be from the State General Fund. Both New Mexico and Arizona laws provide for interest from the date of the withholding as did this legislation before it was stricken in the House. It was removed due to some confusion and to my understanding the Committee Chairman agreed to remove it in order to keep it alive and to clarify any remaining issues in the Senate. We request that this language be restored to the legislation.

Thank you very much for the opportunity to provide testimony.

Vivien Olsen