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DENNIS "BOOG" HIGHBERGER
46TH DISTRICT

TESTIMONY ON HB 2147

Before the Committee on Veterans and Military Affairs
of the Kansas House of Representatives

February 7, 2017

Rep. Dennis "Boog" Highberger
46th District, Lawrence

Chairman Osterman and Members of the Committee,

Thank you for the opportunity to testify as a proponent of HB 2147, a bill which would require the Kansas Department of Revenue to determine whether Kansas state income taxes have been improperly withheld from the military pay of Native American service members. If the Department determines that such improper withholding occurred, the bill directs the Department to determine the names of the affected service members or their survivors, and to study the cost of implementing and administering a fund to settle claims for improperly withheld funds. The bill does not require to the Department to create such a fund or pay any claims.

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 and in the rest of the City of Lawrence.

It is my understanding that this situation arose from the interaction between a 1973 US Supreme Court decision¹ and a 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.

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

² 50 U.S.C. § 571(a).

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. The amounts owed to any individual may not be large, but could still be significant to many the eligible retired veterans.

I would happy to do my best to answer to any questions you have.