

Opinion No. 59-109

August 17, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Morgan Nelson, Chairman Appropriations and Finance Committee House of Representatives Route 2, Box 80 Roswell, New Mexico

{*171} This opinion is in response to your letter in which you requested the views of this office on the following question:

Is the excise tax assessed under § 64-11-15 (b), N.M.S.A., 1953 (P.S.), applicable to a person in the military service stationed on a military base in New Mexico?

It is our opinion that this tax is not applicable to such persons.

Your question is precipitated by § 64-11-15 (b), which provides for the levy and imposition of an excise tax on the issuance of every original certificate of title of 1% of the sales price, in the event of a newly purchased vehicle, or upon the fair market value of such vehicle as shown by nationally recognized vehicle pricing guides. There are certain deductions permitted which are not pertinent to this question.

The question has been particularly raised as to whether the tax therein provided for may be levied and imposed against military personnel stationed on military bases within this State. Related to this question is the one whether military personnel are required to register their vehicles in accordance with the requirements of § 64-6-1, N.M.S.A., 1953 (P.S.). Prior to the amendment of the registration requirements of non-resident owners as imposed by the last mentioned statute, it was clear that such registration was not required of military personnel stationed within this State. Opinion No. 6037, 1953-54. However, in view of the amendments made to § 64-6-1 by the recent Legislature, there are serious doubts as to whether the exemption afforded by § 64-6-3 is now available insofar as the registration of vehicles is concerned. This is for the reason that the exemption provides that such military personnel may operate their vehicles subject to the provisions of § 74 [64-6-1]. As the law is now written, residency is not a requirement before registration is necessary. It merely is necessary that a non-resident owner use or operate his vehicle within this State for a period of thirty days. This would apparently include military personnel as well.

However, it is our opinion that the Soldiers' and Sailors' Civil Relief Act, 50 USCA App. 501 et seq. affords relief to military personnel. Section 574, supra, provides as follows:

"For the purposes of taxation in respect of any person, or of his personal property, . . . by any State, Territory, possession, or political subdivision of any of the foregoing, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders,

or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State,. . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, . . . of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . **personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, . . .**" (Emphasis supplied)

The afore-mentioned section further defines personal property as including "tangible and intangible property (including motor vehicles)" and the term taxation as including {*172} but not limited to "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof". In view of this section, it is clear that military personnel stationed within this State may not be taxed as heretofore defined on their personal property, as defined, within the State wherein they are so stationed so long as he is not a resident of or domiciled in that State.

The Supreme Court of the United States has had occasion to discuss the afore-mentioned § 574 in the case of **Dameron v. Brodhead**, 345 U.S. 322, 97 L. ed. 1041, 32 A.L.R. 2d 612. The court therein states as follows:

"In fact though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces."

Thus, it appears that the Soldiers' and Sailors' Civil Relief Act affords the protection which may otherwise not be afforded military personnel stationed within the boundaries of this State.

There has been some thought that the Soldiers' and Sailors' Civil Relief Act may have been unconstitutional in that it encroached or infringed upon the powers of the sovereign states to tax. However, the Court in the afore-mentioned case of **Dameron v. Brodhead** considered this point and had this to say:

"The constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has often been accorded other types of federal operations or functions. And we have upheld the validity of such enactments, even when they reach beyond the activities of federal agencies and corporations to private parties who have seen fit to contract to carry on functions of the Federal Government. . . .

Nor do we see any distinction between those cases and this. . . . Petitioners duties are directly related to an activity which the Constitution delegated to the national government, . . . Since this is so, congressional exercise of a 'necessary and proper' supplementary power such as this statute must be upheld. . . . What has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power."

Therefore, in view of the Court's holding on this point, there can be no doubt but what the protection afforded the military personnel is within the province of the Federal Government and the State would have no authority to levy or impose a tax of any nature, including license fees or excise taxes imposed by appropriate state legislation, against military personnel stationed within this State and who are not otherwise residents of or domiciled in this State.

In view of this conclusion, it is our opinion that the excise tax levied and imposed by § 64-11-15 (b) may not be assessed against such military personnel stationed within this State.

By Thomas O. Olson

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