

OPINION
66-194

March 25, 1966 (OPINION)

Mr. Weldon Haugen

Motor Vehicle Registrar

RE: Motor Vehicles - Registration - Nonresident Servicemen

This is in reply to your letter requesting an opinion of this office with regard to registering of servicemen's motor vehicles, with particular regard to the "Soldiers' and Sailors' Civil Relief Act of 1940."

You state that you have been informed that the United State Supreme Court handed down a decision in January wherein it was held that under the Soldiers' and Sailors' Civil Relief Act of 1940 the various states cannot require a nonresident serviceman stationed in a given state to pay taxes on his motor vehicle or mobile home other than an administrative fee sufficient to cover only the cost of registering the vehicle and issuing identification plates.

Your specific questions are stated as:

1. In view of this decision, what amount can this department legally charge for the cost of registering a vehicle and issuing identification plates to a serviceman who desires to register a motor vehicle or mobile home in this state.
2. When it is necessary to charge an additional fee in connection with the unsatisfied judgment fund, can this department legally charge this additional fee to the serviceman who registers a vehicle in this state."

We would tentatively presume that you are referring to the case of California v. Lyman E. Buzard, and its companion case Snapp v. Neal, (see Thermofax copies enclosed).

As you will note the footnotes to the Buzard case quote the relevant part of said Soldiers' and Sailors' Civil Relief Act of 1940 as follows:

- (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any state, . . . 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, income, or gross income of any such persons 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 situs for taxation in such state, territory, possession, or political subdivision, or district. . .

- (2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the state, . . . of which the person is a resident or in which he is domiciled has been paid.

The facts of the Buzard case are rather interesting. Captain Buzard was a resident of the state of Washington, his car was licensed in Alabama and had never been driven in the state of Washington and his conviction was for driving it in the state of California without California license plates. The United States Supreme Court mentions the California Supreme Court's decision as reversing Captain Buzard's conviction on the basis of never having driven the automobile in the state of Washington, he owed no tax to the state of Washington insofar as Washington's tax applied only to cars driven on its highways and insofar as he owed no tax to the state of Washington, he could not be required to pay California's tax, in lieu thereof. The United State Supreme Court, however, went a step further. They considered that the state of California has basically an \$8.00 registration fee imposed by the California Vehicle Code and a considerably larger "license fee" imposed by its revenue and taxation code calculated at "two (2) percent of the market value of the vehicle" and is "imposed . . . in lieu of all taxes according to value levied for state or local purposes on vehicles . . . subject to registration under the Vehicle Code. . ."

The United States Supreme Court informs us in the Buzard decision that:

Whatever may be the case under the registration and licensing statutes of other states California authorities have made it clear that the California two percent tax is not imposed as a tax essential to the registration and licensing of the serviceman's motor vehicle. Not only did the California Supreme Court regard the statutes as permitting registration without payment of the tax, but the District Court of Appeal, in another case growing out of this controversy, expressly held that 'the registration statute has an entirely different purpose from the license fee statutes, and it is clearly severable from them.' Buzard v. Justice Court 198 C. A. 2d. 814, 817, 18 Cal. Rptr. 348, 349-350. The California Supreme Court also held, in effect, that invalidity of the 'license fee' as applied was a valid defense to prosecution under Vehicle Code section 4000. In these circumstances, and since the record is reasonably to be read as showing that Captain Buzard would have registered his Oldsmobile but for the demand for payment of the two percent tax, the California Supreme Court's reversal of his conviction is affirmed."

The Snapp v. Neal case makes the holding of the Buzard case even more clear. As stated in the second to the last sentence of that case:

We reverse on the authority of our holding today in Buzard that the failure to pay the motor vehicle 'license, fee, or excise' of the home state entitled the host state only to exact motor vehicle taxes qualifying as 'licenses, fees, or excises'; the ad valorem tax, as the Mississippi Supreme Court acknowledged, is not such an exaction."

We find it difficult to relate this decision to North Dakota's vehicle registration and similar statutes. Thus subsection 2 of section 39-04-19 of the 1965 Supplement to the North Dakota Century Code provides in part:

2. Motor vehicles required to be registered in this state shall be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period such fees shall be prorated on a monthly basis: * * *

It is our opinion that the fees imposed by the remainder of this statute are a tax essential to the functioning of North Dakota as a host state's licensing and registration laws in their application to the motor vehicles of nonresident servicemen.

Section 39-17-01 of the 1965 Supplement to the North Dakota Century Code provides:

ADDITIONAL REGISTRATION FEE. At the time of registering a motor vehicle the owner shall pay to the motor vehicle registrar in addition to the registration fees, a fee of one dollar for each motor vehicle registered."

We find it difficult to construe the fee thus imposed as a "tax essential to the functioning of North Dakota as a host state's licensing and registration laws in their application to motor vehicles of nonresident servicemen", and thus conclude that the department cannot legally charge this additional fee to the serviceman merely by reason of registration of a vehicle in this state.

In specific reply to your questions, it is our opinion that your department can legally charge for the cost of registering a vehicle and issuing identification plates to a serviceman who desires to register a motor vehicle or mobile home in this state the full amount specified in section 39-04-19 of the North Dakota Century Code, as amended to date. It is further our opinion that your department cannot legally charge the additional Unsatisfied Judgment Fund fee to the serviceman who registers a motor vehicle or mobile home in this state.

HELGI JOHANNESON

Attorney General