

**OPINION**  
**66-197**

May 9, 1966 (OPINION)

Motor Vehicle Registrar and

State Tax Commissioner

RE: Motor Vehicles - Taxation and Registration - Military Personnel

This is in response to your requests for an opinion of this office with regard to registration and taxation of servicemen's motor vehicles and mobile homes pursuant to sections 57-39.1-02 and 57-40.1-02 of the 1965 Supplement to the North Dakota Century Code, supplementary to our opinion of March 25, 1966, in regard to application of the reasoning of the United States Supreme Court in *California v. Buzard* and *Snapp v. Neal*.

The full text of the specific provision of the part of the Soldiers' and Sailors' Civil Relief Act 50 U.S.C. App. section 574, applied in those cases provides:

"Section 574. RESIDENCE FOR TAX PURPOSES

- (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any state, territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any state, territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, 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, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, 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 person by any state, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such state, territory, possession, political subdivision, or district, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such state, territory, possession, or political subdivision or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction

other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: Provided, That nothing contained in this section shall prevent taxation by any state, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

- 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, territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

Also, to simplify the application of principles announced in these cases to the statutes you mention we believe it appropriate to consider relevant parts of the California Act which was cited in the California v. Buzard Case.

The following from "West's Annotated California Codes" "Revenue and Taxation Code" gives, we believe, a basic outline of the California tax concerned in the California v. Buzard decision.

"Section 10701. SHORT TITLE

This part is known and may be cited as the 'Vehicle License Fee Law.'

"Section 10702. VEHICLE

'Vehicle' means every vehicle subject to registration under the Vehicle Code."

"Section 10703. DEPARTMENT

'Department' means the Department of Motor Vehicles."

"Section 10751. LEVY

A license fee is hereby imposed for the privilege of operating upon the public highways in this state any vehicle of a type which is subject to registration under the Vehicle Code."

"Section 10752. AMOUNT

The annual amount of the license fee shall be a sum equal to two (2) percent of the market value of the vehicle as determined by the department."

"Section 10753. DETERMINATION OF MARKET VALUE; BASIS

- (a) For the purposes of this part the market value of vehicles shall be determined by the department upon the basis of the California delivered prices as established by the manufacturers or distributors in their selling agreements with authorized dealers as of the time the particular make and year model is first offered for sale in California, subject to the exceptions, procedures and classifications as set forth in this part. \* \* \*."

"Section 10755. PRORATION; NONRESIDENT VEHICLES

Upon vehicles registered for the first time in this state after January thirty-first of any year and upon any nonresident vehicle which has been previously registered in this state in prior years, the fee imposed for this part of the year shall be reduced one-twelfth for each month which has elapsed since the beginning of the year."

"Section 10756. PRORATION; LOSS OF EXEMPTION

If any vehicle which is exempt under section 10781 ceases to be so exempt after the beginning of any registration year by reason of change of ownership, the fee imposed for the year shall be reduced one-half for each month which has elapsed while the vehicle was exempt during the year."

"Section 10757. TRANSFER OF OWNERSHIP; EFFECT ON FEES

No additional license fee shall be imposed under this part upon any vehicle upon the transfer of ownership of the vehicle if any license fee due thereon has already been paid for the year in which the transfer of ownership occurs."

"Section 10758. FEE IN LIEU OF AD VALOREM TAXES

The license fee imposed under this part is in lieu of all taxes according to value levied for state or local purposes on vehicles of a type subject to registration under the Vehicle Code whether or not the vehicles are registered under the Vehicle Code."

California's tax would thus appear to be substantially an entirely different type of tax from those imposed by sections 57-39.1-02 and 57-40.1-02 of the North Dakota Century Code. The North Dakota taxes would appear to be primarily upon the transfer of ownership or in the words of the statute it is measured by "purchase price" and based upon the purchase or acquisition of same for use in this state. The California tax (see section 10757 supra) specifically provides that no additional fee is imposed on account of the transfer. Likewise the North Dakota tax is imposed only on the basis of registration of title on account of such "purchase' or acquisition. The California tax purports to be a fee for the use of California highways, and imposes an annual tax. The North Dakota tax is based on a purchase or acquisition for use on North Dakota highways or in the state but

is based and charged only on purchase not on presence, or time elapsed while such vehicle is present.

The United States Supreme Court informs us in the Buzard case 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."

The North Dakota statutes, sections 57-39.1-06 and 57-40.1-04, as amended, provide:

"57-39.1-06. TITLE OR LICENSE REGISTRATION NOT TO BE ISSUED UNLESS TAX PAID. - No title or license registration shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle purchased in this state to any applicant for title or license registration other than for those vehicles which have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued or other than for those vehicles transferred by way of gift between a husband and wife or parent and child unless the tax imposed by section 57-39.1-01 shall be paid by the applicant to the motor vehicle registrar, or unless and until the tax upon the sale and purchase of such vehicle as provided by chapter 57-39 of the North Dakota Century Code has been paid and certification of such payment is furnished to the motor vehicle registrar as provided in this chapter."

"57-40.1-04. COLLECTION OF TAX. - The tax imposed by this chapter shall be paid by the purchaser to the motor vehicle registrar at the time that application for the first registration plate or certificate of title of such motor vehicle or mobile home is made within this state. No registration plate or certificate of title shall be issued upon such application until such tax has been paid."

Looking back to the above quoted provisions of the Soldiers' and Sailors' Civil Relief Act, we note that same refers to the serviceman's loss of residence or domicile, by reason of military or naval orders, acquisition of residence, taxation of the personal property, income or gross income, and application of taxes with respect to personal property or the use thereof. Looking again to the North Dakota taxes you refer to, they are imposed upon a transaction, not upon residence, domicile, ownership of personal property, income or gross income, or use of personal property.

We certainly cannot suggest that the Soldiers' and Sailors' Relief Act or its construction in the Buzard and Snapp cases was intended to

place the serviceman in regard to his personal status as a citizen, in an "outlaw", "beyond taxation" situation. Rather it would appear that the obvious intention of the act was to prevent double taxation, and unconscionable tax burdens being imposed upon such serviceman where, by reason of military orders, he is required to move his person and effects - though not his legal residence - into a state other than the one in which he is legally domiciled.

Unlike the situation in the cases considered, there is no requirement under North Dakota laws whereby the serviceman would be compelled to register his vehicle or pay the taxes here considered in North Dakota, rather than in the state of his legal domicile.

Where, however, he voluntarily chooses to register the vehicle - and necessarily in instances where the vehicle is registered - the transaction by which it was acquired in the state of North Dakota, we believe a different situation exists than was considered in the cases mentioned.

We note further than the Soldiers' and Sailors' Civil Relief Act provisions quoted above refer to "taxation" as including but not being limited to "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof." The tax we are here concerned with is clearly an excise, but based upon the purchase of vehicles or mobile homes, not upon the motor vehicle itself or the use of such motor vehicle. We see no basis under the above quoted provisions of the Soldiers' and Sailors' Civil Relief Act as interpreted by the California v. Buzard and the Snapp v. Neal cases to consider servicemen as exempted from our sales and use taxes where they voluntarily engage in the taxable transactions. A different question might be presented where military orders required them to engage in such transactions; however, we do not understand from the situations outlined that the servicemen are required to purchase automobiles for use on North Dakota highways or mobile homes for use in North Dakota by military orders.

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