

**OPINION
49-172**

February 5, 1949 (OPINION)

SOLDIERS AND SAILORS

RE: Taxation by State

We have your letter of January 31, 1949, enclosing True Extract copies of "Soldiers' and Sailors' Relief Act of 1940, and Amendments of 1942," War Department Bulletin No. 14, "An Act to Amend Section 514 of the Soldiers' and Sailors' Relief Act," and Joint Army and Air Force Bulletin No. 48, relative to liability for payment of state personal property tax by personnel of the Armed Forces.

You state that in your official capacity as Executive, North Dakota Military District, and the coordinator of all Federal Military activities within the State of North Dakota, and in the interests of the personnel of the Army, Navy, and Air Force, comprising the Federal Armed Forces, you would appreciate an opinion in regard to the payment of State Income Tax and Personal Property Taxes by military personnel in the above categories who maintain their official residence other than in North Dakota.

After reviewing the instruments enclosed in your letter of above date, we wish to inform you that it has been the policy of the State of North Dakota, in compliance with subdivision 3 of Section 57-3817 of the North Dakota Revised Code of 1943, to tax

Any salaries, wages, or compensation of officers or employees of the United States, or its agencies or instrumentalities, including those in the military, naval, and postal forces of the United States, to the extent that collection of state taxes thereon is not prohibited by the terms of Public Salary Act of 1939, it being hereby declared the policy of this state to comply with the provisions of said act."

We further find the Act of October 9, 1940 (Pub. No. 1819, 76th Cong.) provides in part as follows:

Sec. 2(a): No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or from services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such state to the same extent and with the same effect as though such area was not a Federal area.

(b): The provision of subsection (2) shall be applicable only with respect to income or receipts received after December 31, 1940."

By force of our State income tax law as above quoted and also the

provisions of "(Pub. No. 819, 76th Congress)" the State Tax Department has imposed taxes upon income by persons employed by the United States Government on income received while residing in the State of North Dakota.

However, after receiving the Soldiers' and Sailors' Relief Act of 1940 as amended, we find now that we are prohibited from collecting any income tax or imposing any tax on personal property on military men located in the State of North Dakota who are not permanent residents or domiciled in the State of North Dakota.

Section 514 of the Soldiers' and Sailors' Relief Act reads as follows:

"Sec. 514. (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 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, 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; 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."

"SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

"Approved July 3, 1944.

"BY ORDER OF THE SECRETARY OF WAR:

"G. C. MARSHALL,

"Chief of Staff."

This Act as above quoted apparently supersedes any previous Act enacted by Congress and prohibits the State of North Dakota from imposing any income tax on income received by men in the military service or tax on the personal property when a person is not a resident and has not a permanent domicile in the State of North Dakota.

In view of the said section 514 as amended and quoted above, it is my conclusion and opinion that any person, or his (or her) personal property, income, or gross income, whether tangible or intangible, not used in or arising from a trade or business, shall not be deemed to have become a resident or domiciled within the State of North Dakota, for the purpose of taxation within this State, when such person or his personal property is within the State of North Dakota by reason of and in compliance with military or naval orders, but this opinion does not apply to Government employees who are not in the military service because Sec 514 above quoted relieves only military personnel from income and personal property taxes of any State or Territory or political subdivision thereof while present therein solely because of military duty.

WALLACE E. WARNER

Attorney General