

TAXATION: Soldiers' & Sailors' Civil Relief Act exempts person in military service from personal property taxation, unless residence actually established in Missouri

February 10, 1949



Hon. William F. Brown  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Several weeks ago Mr. J. H. Green, Pettis County Court Clerk, together with the Pettis County Assessor, Pettis County Collector, and the County Court acted to strike from the assessment list and to refund personal tax paid by two members of the armed forces on active duty, temporarily residing in Sedalia and assigned to recruiting services.

"Under date of February 3, 1949, Mr. C. C. Nance, acting supervisor, county department, department of revenue, advised Mr. Green by letter that he would not honor the Court order abating the tax and citing as his reason Section 6 of Article 10 of the Constitution of Missouri, and Section 5, page 1800, of Laws of Missouri, 1945. In addition he enclosed an Attorney General's opinion written by William Orr Sawyers, Assistant Attorney General, under date of May 18, 1934.

"I respectfully call your attention to Section 574 at page 196, Title 50 of the U. S. C. A., relating to the exemption for personal tax of members of the armed

forces. It was under and by virtue of the Soldiers and Sailors Relief Act and this specific provision that I advised the Court officials that they could not assess and collect a personal property tax of these men who are temporarily stationed here.

"Will you kindly ~~write~~ write me an opinion stating whether or not the personal property of a member of the armed forces temporarily stationed in Pettis County, or in any county for that matter, is subject to assessment and taxation."

Section 17 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, 50 U. S. C. A., Appendix, Section 574, provides 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, 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: 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."

Although this particular section appears not to have been passed upon by the courts of this state, or any other jurisdiction, the validity of the Soldiers' & Sailors' Civil Relief Act, generally, has been upheld on numerous occasions. United States v. Alberts, 59 Fed. Supp. 298; Rading v. Ninth Federal and Savings Loan Ass'n, 55 Fed. Supp. 361, 371 (8), Ann., 130 A. L. R. 775.

Under the section above quoted a person in military service does not acquire a residence by reason of his being stationed within a state on military duty. His liability for personal property taxes would depend upon whether or not he had actually established a residence, which would in turn depend upon whether

or not he maintains a permanent residence in another state. If he does so, he would not be subject to personal property taxation while stationed in Missouri on military duty.

The opinion of Mr. Sawyers, to which you referred in your request, is dated May 18, 1934, which was, of course, prior to the adoption of the Soldiers' & Sailors' Civil Relief Act. In view of the provisions of that act, that opinion no longer represents the law in this state.

Conclusion.

Therefore, it is the opinion of this department that, under Section 17 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, 50 U. S. C. A., Appendix, Section 574, a person stationed in Missouri on military duty is not subject to personal property taxation, unless he has actually established a residence in this state and does not maintain a permanent residence or domicile elsewhere.

Respectfully submitted

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General