

TAXATION: Non-resident military personnel who is or has
MILITARY PERSONNEL: personal property temporarily in this state
does not owe personal property tax to the state.

August 30, 1966

OPINION NO. 91 (1966)
OPINION NO. 463 (1965)

Honorable George C. Baldrige
Prosecuting Attorney for Jasper County
Courthouse, 6th and Pearl
Joplin, Missouri



Dear Mr. Baldrige:

This opinion is in response to your inquiry of the liability of military personnel for personal property tax upon his alleged property being used by his family located in Missouri when such personnel (who claims to be a resident of another state) is overseas pursuant to military duty.

Section 574, Title 50, USCA reads, in pertinent parts, 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

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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. As amended Oct. 9, 1962, Pub. L. 87-771, 76 Stat. 768."

This office recognizes that the personal property of non-resident military personnel who are in this state pursuant to their military status is not taxable by this state. We have so held in Opinion Attorney General No. 93, addressed to Wayne W. Waldo dated January 8, 1953, (copy attached).

To state the facts involved as alleged by the legal assistance officer at Fort Leavenworth, who stated, "that during the tax year in question, he (the taxpayer) was stationed in Vietnam and had located his family in Missouri. He maintains that he is not a domiciliary of the State of Missouri but of the State of Kansas. He further maintains that the property located in

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Missouri was his sole property."

The United States Court of Appeals (5th Circuit-1964) has these comments about personal property exemption of military personnel in U.S. v. Arlington County, Commonwealth of Va. 326 Federal 2nd 929, 933:

"The County contends that his personal property ceased to be exempt from taxation when he was transferred pursuant to military orders to a post outside Virginia, but elected to leave his family and personal property in Arlington County for approximately a year and a half after the transfer. The district court agreed, and in so doing we think it read into the Act a limitation which is not there. In its opinion the court said:

"'Under [these] circumstances the personal property in question did not remain in Virginia by virtue of Captain Bottomley's military orders, and it is subject to the same personal property taxes as other personal property located in Virginia as of January 1, 1960.'

"As we read the Act it says that the serviceman shall not be deemed to have lost his residence or domicile in his 'home' state if he is absent therefrom solely in compliance with military orders. The Act then adds: with respect to taxation of such person's personal property -- that property shall not be deemed to be present in or to have a situs for taxation in such state; i. e., in a state in which he is deemed not to reside or be domiciled.

"[3,4] To put the matter in another way, the Act does not say that the serviceman shall not be deemed to have acquired a domicile in the host state because he was there by virtue of military orders -- it says he shall not be deemed to have lost his domicile in his 'home' state, and the Act further states that the

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same condition shall exist with respect to his personalty. Thus we think the Act makes it clear that the Congress intended to exempt the serviceman from taxation on his personal property except by his 'home' state. This is the rational conclusion to be drawn from *Dameron v. Brodhead*, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041 (1953), where the Supreme Court rejected an attempt by the host state to tax a serviceman's personalty because his 'home' state did not. The argument there being that the purpose of the Act was to prevent multiple taxation and since the 'home' state did not tax, the host state was free to do so. In rejecting the argument the Court said:

"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.' 345 U.S. at 326, 73 S.Ct. at 724, 97 L.Ed. 1041 (Emphasis added.)

"On October 9, 1962, while this case was pending, the Congress amended the Act to provide that regardless of where the owner may be serving, his personal property may not be taxed except in his home state. Legislative history states that the change was made in order to clarify the original intent of the Act that only the 'home' state should have the right to tax. We do not need the change to read the Act as prohibiting the tax in question. The judgment is, therefore, reversed with directions to the court to enter judgment in conformity with this opinion."

The above opinion seems persuasive on the issue of taxation

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of personal property of non-resident military personnel within this state.

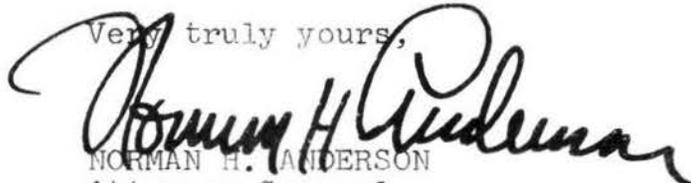
CONCLUSION

It is the opinion of this office that:

1. A non-resident serviceman who is or has personal property on a temporary basis in this State does not owe personal property tax to the State.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard C. Ashby.

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosure:
Opinion No. 93 (1953)