

TAXATION:

MILITARY PERSONNEL: Nonresident military personnel having personal
COUNTY COLLECTOR: property in Missouri can obtain a certificate
of no tax due from the county collector. The
collector, in the exercise of his discretion and judgment determines
whether such military personnel is a bona fide nonresident within
the purview of Section 301.025, RSMo 1959.

Opinion No. 95 (1966)
Opinion No. 468 (1965)

February 16, 1966



Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri 65802

Dear Mr. Burrell:

This opinion is in response to your inquiry concerning the procedure and proof to be submitted by a soldier on duty status in Missouri to the county collector to establish that no personal property tax is due in order to purchase his automobile license plates.

The statutes, in pertinent parts, reads as follows:

Section 136.120, RSMo 1959 -

"The state collector of revenue shall have the power to prescribe such rules and regulations, not inconsistent with other provisions of law, as may be necessary to the efficient conduct of the division of collection. The state collector of revenue shall have the power to publish from time to time in pamphlet or booklet form said rules and regulations and the tax, licensing and fee laws of the state of Missouri. He shall distribute copies thereof for use of the public, but in his discretion may require payment of a reasonable charge therefor."

Section 301.025, RSMo 1959 -

"No state registration license to operate any motor vehicle in this state shall be issued unless the application for license is accompanied by a tax receipt or a statement certified by the county or township collector of the county or township in which the applicant's

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property was assessed showing that the state and county tangible personal property taxes for the preceding year have been paid by the applicant or that no such taxes were due. Every county and township collector shall give each person a tax receipt or a certified statement of tangible personal property taxes paid. Where no such taxes are due each such collector shall, upon request, certify such fact and transmit such statement to the person making the request. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms."

The Director of Revenue for this state, by his letter dated January 4, 1966, has advised this office that he has not issued any rules or regulations to be followed in similar cases.

We assume from your letter that you are interested in the procedure to be followed so that the soldier can buy a Missouri license. You state there is little doubt he keeps his legal residence in Nebraska. You also acknowledged the Opinion Attorney General No. 93, addressed to the Honorable Wayne W. Waldo, dated January 8, 1953, to the effect (among other things) that non-resident military personnel are exempted from payment of personal property tax. (See U.S. v. Arlington County, Commonwealth of Virginia et al, 326 Fed.2d 929, 933; California v. Buzzard, No. 40, decided at the October Term, 1965, by the U.S. Supreme Court, 34 Law Week 4087 and Snapp v. Neal, No. 16 decided at the October Term, 1965, by the U.S. Supreme Court 34 Law Week 4090, January 18, 1966) and secondly, the collector, upon request should certify that no taxes are due from such personnel in these instances.

Nowhere in Chapter 52 or in Chapter 139, RSMo 1959, or elsewhere in the statutes do we find any provisions covering this problem. The statutes do provide that the collector shall issue such a certificate and transmit it to the person requesting it (Section 301.025, RSMo 1959).

We find this comment on the problem in 67 CJS "Officers" Section 103, p. 371:

"* * * A general grant of power, however, unaccompanied by definite directions as to how the power is to be exercised, implies the right to employ means and methods necessary to comply with statutory requirements* * *."

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The above principle is accepted by the Missouri Supreme Court, en banc, in State ex rel. Bybee v. Hackman, 207 S.W. 64, 65; State ex rel. Bradshaw 208 S.W. 445, 448, etc.

We conclude therefore that there is no statutory procedure or rules published covering this problem area. When a request is made by a soldier to the collector to certify that no taxes are due, his decision should be one that is made by the collector dictated by his good judgment and reason and based on facts which would cause a reasonable man to act in the same or similar situation. If the collector is satisfied by the affidavit (as he apparently is in this case) that the soldier is a bona fide resident of another state, the collector should issue the certificate that no taxes are due.

We might suggest that a copy of the affidavit be forwarded to the county of alleged residence for verification of the facts alleged if you desire to pursue the matter further.

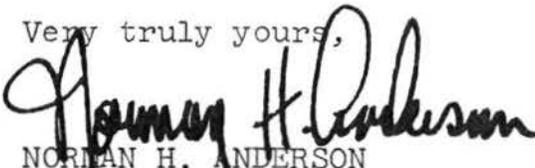
CONCLUSION

It is the opinion of this office:

The collector, in the exercise of good judgment and reason determines what he requires to satisfy his best judgment that the soldier is a bona fide resident of another state presently on duty in Missouri on military service and comes within the purview of Section 301.025, RSMo 1959, so as to be entitled to a certificate no such taxes were due.

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

Very truly yours,


NORMAN H. ANDERSON
Attorney General