

TAXATION: Personal property in Missouri owned by soldier, who is nonresident of this State, and only here in compliance with military orders, is not taxable in Missouri.

May 4, 1943



Colonel Frank E. Shaw
Seventh Service Command
Office of the Judge Advocate
Omaha, Nebraska

Dear Colonel Shaw:

On April 20, 1943, you requested this department to supply you with any rulings we had made relative to the tax exemption granted in Section 10937 R. S. Mo., 1939, to "all persons belonging to the army of the United States." On April 22, 1943, we supplied you with copies of four opinions on that subject, they being opinions rendered to John P. Shreves, May 18, 1934; William H. Sapp, September 17, 1936; Andy W. Wilcox, January 4, 1937; and Phil H. Cook, December 18, 1941. Only the first two of said opinions attempt to discuss this question. The other two merely rely upon the first two as authority for the conclusion reached.

The Shreves opinion dealt with the effect of such exemption on personal property of "army personnel on temporary duty (detached service) from the army to duty in the State of Missouri". The Sapp opinion dealt with the same question as applied to "members of the R. O. T. C." We concluded that the exemption in question only exempted the "person" in the army from taxation, and that since personal property taxes are taxes on said personal property rather than taxation of the "person" who owns or holds the property, the exemption granted in Section 10937, supra, did not operate to exempt from taxation the personal property of a person in the armed forces of the United States.

May 4, 1943

Since it is of importance in connection with the question presently to be stated, we note now that neither of the above opinions discloses whether the persons in the armed forces contending for the exemption were legal residents of Missouri. The inference is that in the Shreves opinion the person was not a legal resident of Missouri, while in the Sapp opinion the inference is that the persons involved were legal residents of Missouri.

On April 24, 1943, you called our attention to the Act of Congress of October 6, 1942, and asked that we reconsider our opinions in the light of that act. Said act is as follows (50 U. S. C. A., App. 574):

"For the purpose of taxation in respect of any person, or of his property, * * * * * by any State, * * * * * or political subdivision * * * * * such person shall not be deemed to have lost a residence or domicile in any State, * * * * * or political subdivision * * * * * 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, * * * * * or political subdivision * * * * * while, and solely by reason of being, so absent. * * * * *

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 the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942."

This section was adopted as a part of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. A., App. 501, et seq.), and applies to the persons in the armed forces designated in said act.

Sections 10936, 10937, 10939, 10940 and 10950 R. S. Mo., 1939, make it clear that personal property within this State, that is owned by a nonresident is taxable here, just as is personal property not in this State that is owned by a resident of Missouri. It was said in State ex rel. Union Electric Light and Power Co. v. Baker, 293 S. W. 399, 316 Mo. 853, 858:

"It is the well settled policy of our law that taxes shall be levied and collected for public purposes on all property within the territorial jurisdiction of the State, except that expressly enumerated as exempt.
* * * * *

Section 10939, supra, applies particularly to the property not within the state but which is owned by a resident of Missouri.

By force of the superior power of Congress as exercised in 50 U. S. C. A., App. 574, supra, it is clear that the conclusions reached in our opinions referred to herein must be modified as long as that act is in effect to the extent that Missouri may not now impose a tax on personal property brought into Missouri by a person in the armed forces who is located in Missouri by reason of compliance with military or naval orders when said person is not a legal resident of this State. Section 574, supra, was properly enacted under the power vested in Congress to declare and prosecute war (Twitchell v.

Colonel Frank E. Shaw

-4-

May 4, 1943

H. O. L. C., 122 P. 2d 210) and, as has been said: We have then an assertion of federal power * * * * * which by reason of the supremacy clause excludes any exercise of a conflicting state power." Penn Dairies v. Milk Control Commission, 63 S. Ct. 617, 628.

We do not understand the above act to affect the right of the State to tax personal property of legal residents of this State who are in the armed services, but rather it seems that said act would prevent a resident of Missouri from asserting that he had acquired a residence elsewhere and that, therefore, property taken with him was not subject to being taxed in Missouri, when he is absent from the State of Missouri, his legal residence, solely because of his compliance with military or naval orders.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

LLB:FS