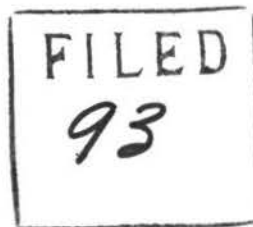


TAXATION: 1) Non-resident military personnel  
PERSONAL PROPERTY: exempted from payment of personal  
MOTOR VEHICLES: property tax. 2) Non-resident  
UNITED STATES: civilian employees living within or  
COLLECTOR: without boundaries of Fort Leonard  
Wood reservation owe personal prop-  
erty tax. 3) Resident military personnel owe personal property  
tax in county of residence. 4) Collector should certify no taxes  
due from non-resident military personnel.

January 8, 1953



Honorable Wayne W. Waldo  
Prosecuting Attorney  
Pulaski County  
Waynesville, Missouri

Dear Mr. Waldo:

This is in reply to your request for an opinion which is as follows:

"The opinion of the Attorney General is respectfully requested on the following situation:

"House Bill number 211, which became effective April 22, 1952 provides that a receipt for personal taxes must be presented at the time of purchase of Missouri automobile licenses. Soldiers living within the area of Fort Leonard Wood often do not have this tax receipt. Although Fort Leonard Wood is in Pulaski County, the assessor has not been able to enter the reservation to assess a tax.

"Is it proper for the collector of Pulaski County to give non-residents living in the Fort Leonard Wood area a certificate that no tax is due.

"If a soldier is stationed at Fort Leonard Wood who is a resident of some other county of Missouri, does he pay the personal tax in Pulaski County or in the other county in Missouri which he claims as his place of residence.

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"Is it lawful for the collector of Pulaski County to receive a tax from soldiers living within the Fort Leonard Wood area who voluntarily come to his office and pay a personal tax in order to get automobile licenses. If this is correct, by whom is the tax assessed, when is it assessed, and how much should be assessed.

"Is the county assessor for Pulaski County authorized to enter the reservation of Fort Leonard Wood to assess personal taxes on persons living within the reservation area.

"Are Military personal who are attached to Fort Leonard Wood, who reside within Pulaski County but who do not reside within the reservation boundary, liable for the assessment and payment of personal taxes.

"It is felt that this is an important question because it will reoccur each year and the other counties contiguous or close to Fort Leonard Wood will also be affected by this situation. It is felt that the opinion of the Attorney General will completely clarify the situation."

In view of the fact that there are several questions presented by your request, we will attempt to answer them in what we deem to be the most logical order.

First, we consider the question of whether or not there is liability for personal property tax of non-resident military personnel living both within the area of Fort Leonard Wood and also military personnel who are attached to the command at Fort Leonard Wood and who do not reside within the reservation boundary, but in Pulaski County.

In answer to this question, we call attention to the opinion of this department (Brown-1949) which concludes 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 tax, unless he has actually established a residence in this State and does not maintain a permanent residence or domicile elsewhere.

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Section 17, noted above, 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

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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. Oct. 17, 1940, c. 888, § 514, as added Oct. 6, 1942, c. 581, § 17, 56 Stat. 777, and amended July 3, 1944, c. 397, § 1, 58 Stat. 722."

Thus, it becomes clear that non-resident military personnel stationed within the boundary of Fort Leonard Wood are fully protected by the Soldiers' & Sailors' Civil Relief Act of 1940 from taxation of personal property. The same Act also operates to protect non-resident military personnel attached to the command at Fort Leonard Wood and residing outside the boundaries of the reservation unless they have actually established a residence in Missouri, in which event they would be considered Missouri residents and would be liable for the payment of personal property taxes in Missouri.

In answer to your question as to whether or not military personnel stationed at Fort Leonard Wood who are residents of some other county in Missouri, you are directed to Section 137.090, RSMo 1949, which is as follows:

"All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

With regard to the question as to whether or not the Collector of Pulaski County may receive a tax from non-resident military personnel who are exempted from the payment of personal property taxes, but who, nevertheless, voluntarily offer to pay a personal tax in order to get an automobile license, we must, of necessity, refer to our answer on the basic question of the applicability of House Bill No. 211, passed by the 66th General Assembly, which will appear later in this opinion. It will appear that voluntary payments are unnecessary in order to obtain an automobile license.

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Moreover, it should be noted that it is the duty of the Collector to collect taxes which are due and owing and it is not his duty to collect taxes which are not owed to the State. The Collector, under Section 52.020, RSMo 1949, is required to give bond that he shall faithfully perform the duties of the office of collector according to law. It would appear from some of the early Missouri cases (State v. Shacklett, et al., 37 Mo. 280; Glasgow v. Rowse, 43 Mo. 479), that there is a possibility of personal liability on the part of a collector who knowingly collects taxes which are not due and owing.

Non-resident civilian employees who reside in Pulaski County outside the boundary of the reservation are subject to the personal property tax. Section 137.075, RSMo 1949, provides as follows:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 137.100, RSMo 1949, provides for certain exemptions from taxation, but nowhere is there an exemption from taxation of the personal property of non-residents.

In the early case of City of St. Louis v. Wiggins Ferry Company, 40 Mo. 587, the Supreme Court of Missouri made it clear that the personal property of non-residents was taxable in the same manner as the personal property of residents. In its opinion, the Court stated as follows:

"The personal property of a non-resident actually situated in another State is not to be assessed and taxed against him in this State, but the property of either a resident or a non-resident is taxable here, if it be found situate within the local jurisdiction, whether it be in the hands of the owner himself or his agents. (Citing cases.)"  
(Emphasis ours.)

We now proceed to the question as to whether or not civilian employees at Fort Leonard Wood who live in the housing area within the boundary of the reservation are subject to the personal property tax.

Unless the jurisdiction of the United States over the reservation area of Fort Leonard Wood is exclusive, the personal property

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of the civilian employees residing thereon is subject to taxation in the same manner as the personal property of Missouri residents and non-residents residing outside the military area. It is plain that the civilian employees are not protected by the provisions of the Soldiers' & Sailors' Civil Relief Act, supra.

Section 8, Clause 17, Article 1 of the Constitution of the United States provides that Congress shall have power: "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, \* \* \* and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dockYards, and other needful Buildings;."

There have been several enactments of the Missouri State Legislature ceding exclusive jurisdiction over land acquired by the Federal Government. These may be found in Laws of Missouri, 1943, page 627, and Laws of Missouri, 1947, Volume I, page 366, and the present Sections, 12.030 and 12.040, RSMo 1949. It should be noted that in all these Acts the State of Missouri has reserved to itself the right of taxation to the same extent and in the same manner as if cession has not been made. The Supreme Court of the United States has ruled upon this question several times and has considered the various aspects of the laws in relation to cession of jurisdiction over land by the States to the United States with certain reservations in the States. These cases are: Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 29 L. Ed. 264, 269, 5 Sup. Ct. Rep. 995; James v. Dravo Contracting Co., 302 U.S. 147, 82 L. Ed. 155, 58 Sup. Ct. 208, 114 A.L.R. 318 and Collins, et al. v. Yosemite Park & Curry Co., 304 U.S. 518, 82 L. Ed. 1502.

At the time of the acquisition of Fort Leonard Wood, there was no statute in effect ceding jurisdiction over lands acquired by the United States for the purposes as set forth in Section 8, Clause 17, Article 1 of the Constitution of the United States, supra. Section 12691, R. S. Mo. 1939, provided for the cession of jurisdiction over land acquired for certain other purposes. Thereafter, the 62nd General Assembly sought to clarify the jurisdiction between the State and Federal governments over certain properties which had been acquired for military purposes. Laws of Missouri, 1943, page 627, provided as follows:

"1. The consent of the State of Missouri is hereby given, in accordance with the seven-

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teenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise, of any land in this State which has been acquired, prior to the effective date of this Act, as sites for customhouses, courthouses, post offices, arsenals, forts, and other needful buildings required for military purposes.

"2. Exclusive jurisdiction in and over any land so acquired, prior to the effective date of this Act, by the United States shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the State of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the State of Missouri the right to serve thereon any civil or criminal process issued under the authority of the State, in any action on account of rights acquired, obligations incurred, or crimes committed in said State, but outside the boundaries of such land, but the jurisdiction so ceded to the United States shall continue no longer than the said United States shall own such lands and use the same for the purposes for which they were acquired.

"3. Whereas, there now exist within the boundaries of this State large areas of land occupied for military purposes, among which are those occupied by Lake City Ordnance Plant, Weldon Spring Ordnance Works, St. Louis Ordnance Plant, St. Louis Powder Farm, St. Louis Medical Depot, Fort Leonard Wood, Camp Crowder, Missouri Ordnance Works, Vichy Airport, and Kansas City Quartermaster Depot, and there exists in the said areas uncertainty as to complete jurisdiction, which is resulting in duplication and misunderstandings between the State and Federal law enforcements agencies, and an emergency exists within the meaning of Article IV of the Constitution of

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this State, this act shall be in force from and after its passage and approval by the Governor." (Emphasis ours.)

You will note that there was a reservation of the power of taxation in the State of Missouri. The effect of such a reservation upon Section 8, Clause 17, Article 1 of the Constitution of the United States was considered by the United States Supreme Court in the case of James v. Dravo Contracting Co., 302 U.S. 147, 82 L. Ed. 155, 58 Sup. Ct. 208, 114 A.L.R. 318. In that case the State of West Virginia sought to impose a tax upon a contractor doing work for the Federal government in the State of West Virginia. The State had given its consent to the acquisition of the land with a general reservation. The Supreme Court held that since Clause 17 contained no express stipulation that the consent of the State must be without reservation, there was an implied authority in the State to qualify cessions of jurisdiction when purchases have been made without consent or property had been acquired by condemnation.

Since it was within the power of the State of Missouri to reserve specifically the power of taxation, and since it is clear that it did qualify its cession, therefore, we must conclude that civilian employees residing within the boundaries of the Fort Leonard Wood reservation are liable for the payment of personal property taxes.

In view of the above, we think that the duties of the Collector under House Bill No. 211, passed by the 66th General Assembly, become clear. That Bill is as follows:

"AN ACT To provide that no state motor vehicle registration license shall be issued unless proof is given that state and county tangible personal property taxes if due have been paid, with an effective date.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. 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 applicants property was assessed showing that



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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.

"Section 2. 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 act, and shall design all necessary forms.

"Section 3. This act shall become effective January 1, 1952."

In the case of non-resident military personnel residing either upon the reservation of Fort Leonard Wood or in the confines of Pulaski County, the Collector should, upon request, certify that no taxes are due from such personnel.

Civilian employees who were residing either upon the reservation or in Pulaski County on the first day of January became liable for the payment of personal property taxes in the same manner as other residents of Pulaski County. In this connection, however, we feel that we should call your attention to an opinion of this office (Dale-1952) which holds that: where a person owns personal property on January 1, 1951, which is not assessed and carried on the tax books delivered to the Collector such person is entitled, under the provisions of House Bill No. 211, 66th General Assembly, upon request, to a certified statement from the Collector that no taxes are due, since the liability for such taxes is based upon a valid assessment.

You ask further whether or not the County Assessor of Pulaski County is authorized to enter the reservation of Fort Leonard Wood to assess personal taxes on persons living within the reservation area.

We are unable to find any authority for such entry in the Federal statutes, and, therefore, must look to the good faith of the United States Government in permitting the State of Missouri to exercise its rights under the statutes ceding exclusive jurisdiction to the Federal government over the area.

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In the Collins case, supra, the Supreme Court stated at L. Ed. 1.c. 1510:

" \* \* \* As the National Government may, 'by virtue of its sovereignty' acquire lands within the borders of states by eminent domain and without their consent, the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights. It follows that jurisdiction less than exclusive may be granted the United States. The jurisdiction over the Yosemite National Park is exclusively in the United States except as reserved to California, e.g., right to tax, by the Act of April 15, 1919. \* \* \* ."  
(Emphasis ours.)

Therefore, we assume that the United States Government will permit the State of Missouri to exercise the jurisdiction which it has reserved to itself, that is, the right to tax personal property of the civilian employees living upon the reservation.

#### CONCLUSION

Therefore, it is the opinion of this department that:

- 1) Non-resident military personnel, whether living within the boundary of the Fort Leonard Wood military reservation or without such boundary, are not liable for a personal property tax in the State of Missouri;
- 2) Resident military personnel should pay the personal property tax in the county of residence;
- 3) It is not the duty of the Collector to accept voluntary payments of a personal property tax from non-resident military personnel;
- 4) Non-resident civilian employees living within the boundary of the Fort Leonard Wood military reservation are subject to the payment of personal property taxes;
- 5) Non-resident civilian employees living without the boundary of the Fort Leonard Wood military reservation are subject to

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the payment of personal property taxes in the same manner as other residents of Pulaski County;

6) The Collector should certify that there is no personal property tax due from non-resident military personnel in accordance with the provisions of House Bill No. 211.

Respectfully submitted,

JOHN R. BATY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General