

## Opinion No. 59-216

December 30, 1959

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Benny E. Sanchez, Commissioner Department of Motor Vehicles Santa Fe, New Mexico

### QUESTION

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Can you require the registration and payment of excise taxes of nonresident military personnel of their vehicles when the state of residence does not require registration and payment of taxes on motor vehicles or house trailers?

#### CONCLUSION

No.

### OPINION

#### {\*331} ANALYSIS

This opinion supplements Opinion No. 59-109 dated August 17, 1959, wherein we held that the excise tax assessed under Section 64-11-15 (b), N.M.S.A., 1953 Compilation (P.S.) was not applicable to those persons in military service stationed on a military base in New Mexico. The statute pertinent to the question you have raised is Section 574 of Title 50 App. United States Code Annotated. This section, a part of the Soldiers' and Sailors' Civil Relief Act, provides in part as follows:

"For the purposes of taxation in respect of the personal property . . . of any such person by any State . . . personal property shall not be deemed to be located or present in or have a situs for taxation in such State . . ."

By "such State" the statute intends the state wherein the military serviceman is located but which is not the state of his residence or domicile.

The above section has for its purpose the exclusion from taxation of service personnel located within its boundaries but which are not resident of or domiciled in the state. The purpose of the statute is best described in the case of **Dameron v. Brodhead**, 345 U.S. 322, 97 L. ed 1041, 32 A. L. R. 2d 612 wherein the Court stated as follows:

". . . 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.**" (Emphasis supplied).

{\*332} In view of the provision of the above act and the interpretation made thereof by the Supreme Court of the United States, no other conclusion can be reached but that the servicemen located within this state, but who are residents of and domiciled in another state, are excluded from taxation of their personal property, including registration of and excise tax on their motor vehicle and personal property. This is true even though the state of residence and domicile does not exercise its right of taxation.

By: Thomas O. Olson

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