

## Opinion No. 66-83

June 28, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

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

### QUESTION

#### QUESTION

Must non-resident military personnel licensing motor vehicles and house trailers in this State pay the 1 1/2% excise tax imposed by Section 64-11-15, N.M.S.A., 1953 Comp. (P.S.)?

#### CONCLUSION

No.

### OPINION

#### {\*110} ANALYSIS

In Attorney General Opinion No. 65-131, this office ruled that non-resident military personnel, who do not register their house trailers in the states of which they are residents, must register them in New Mexico. We reaffirm this ruling. This same rule governs the registration of motor vehicles.

Two recent United States Supreme Court decisions have made it clear that this State can no longer collect the 1 1/2% excise tax imposed by Section 64-11-15, N.M.S.A., 1953 Comp. from non-resident military personnel. These Supreme Court decisions are **California v. Buzard**, 382 U.S. , 86 S. Ct. 478, and **Snapp v. Neal**, 382 U.S. , 86 S. Ct. 485.

In the **Buzard** case, the Court held that California could not collect a 2% "license" fee which was imposed solely for revenue purposes as opposed to the purpose of enforcing registration and licensing statutes. This is the same purpose of the excise tax imposed by Section 64-11-15, supra. Subsection D of 64-11-15 provides that all funds collected under the Section will be transferred to the general fund. Thus, we see the money will be used for the general expenses of government and is within the immunity of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. See **Buzard**, supra. This conclusion does not mean, however, that non-resident military personnel

need not pay the other fees imposed for registration of motor vehicles and house trailers.

In view of some questions that have come to this office, we point out that in Attorney General Opinion No. 61-78, we ruled that house trailers which are placed on permanent foundations become subject to real property taxes. In our opinion, all other house trailers are subject to registration, as provided in the Motor Vehicle Code.