

Opinion No. 71-98

August 6, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Col. Martin E. Vigil Chief, New Mexico State Police Albuquerque Highway Santa Fe, N.M. 87501

QUESTIONS

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Is an automobile exempt from registration in New Mexico if the car is owned by a non-resident military officer who resides at a military base located within the State of New Mexico and whose wife uses his automobile for commuting to and from her employment in Alamogordo?

CONCLUSION

Yes, so long as the automobile is licensed and registered in the serviceman's home State.

OPINION

{*146} ANALYSIS

Your question directly raises the issue of the continuing validity of Opinion of Attorney General No. 62-113, dated September 4, 1962, in which this office ruled that Sections 64-6-1 and 64-6-3, N.M.S.A., 1953 Comp., required the registration in New Mexico of automobiles owned by non-resident servicemen who remained in the State longer than thirty days. In light of subsequent United States Supreme Court cases which interpret the federal Soldiers' and Sailors' Civil Relief Act, we conclude that the former Opinion is no longer applicable and must be overruled to the extent discussed below. In doing so, we reaffirm Opinion of Attorney General No. 59-109, issued August 17, 1959, in which we concluded that the Soldiers' and Sailors' Civil Relief Act exempted non-resident servicemen's automobiles from our registration requirements.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. app. § 574), exempts the personal property of servicemen stationed outside of their home State from taxation by the State in which they are stationed. Section 514(2), **supra**, deals specifically with automobiles and reads:

"(2) When used in this section, (a) the term "personal property" shall include tangible and 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.**" [Emphasis added.]

In Opinion of Attorney General No. 62-113, we indicated that we did not feel the above-quoted section was intended to exempt motor vehicles owned by non-resident military personnel from registration in New Mexico. Since that Opinion was issued, several United States Supreme Court cases have interpreted § 514(2) in a manner inconsistent with our opinion.

{*147} The case of **Sullivan v. United States**, 395 U.S. 169, 89 S. Ct. 1648, 23 L. Ed. 2d 182 (1969), involved the question of whether § 514 exempted servicemen stationed in Connecticut, who were residents or domiciliaries of other States, from sales and use taxes imposed by Connecticut. The Court discussed in some detail its interpretation of § 514. Basically, it concluded that Congress meant to protect the serviceman from taxation by both the home State and the State in which the serviceman happened to be stationed. In discussing whether servicemen were subject to "use" taxes, the Court said:

"We think that, in light of the clear indications of congressional intent discussed above, the most sensible inference to be drawn from this language is that **the only taxes on the use of property from which servicemen are exempted are the special registration taxes imposed annually by all States on the use of motor vehicles.**" (Emphasis added.) 395 U.S. at 181.

The Court went on to say:

"It is thus evident that in subsection (2)(b) Congress was dealing solely with a unique form of state "tax" -- the motor vehicle registration fee. Because such fees are not always clearly classifiable as property taxes, servicemen would not be exempted from many of them by subsection (1) of § 514. Since annually recurring license fees raise much the same risk of double taxation to transitory military personnel as do property taxes, Congress evidently decided in 1944 to extend the exemption of § 514 to include motor vehicle registration fees as well as property taxes." 395 U.S. at 182.

The above-quoted language compels a conclusion that § 514 prohibits the host State from requiring a nonresident serviceman to register his motor vehicle.

Two other cases support this conclusion. In **California v. Buzard**, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966), the Court held that by virtue of § 514, servicemen may not be required to register their automobiles in host States **if they have registered them in their home States**, but if they have failed to do so, the host State may then require the automobile to be licensed in the host State. See also **Snapp v. Neal**, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

Opinion of Attorney General No. 59-109, **supra**, considered the problem of the constitutionality of § 514 and cited **Dameron v. Brodhead**, 345 U.S. 322, 73 S. Ct. 721,

97 L. Ed. 1041 (1953), in which the Supreme Court held that Congress could constitutionally protect servicemen from multiple taxation and that the federal law prevailed.

Therefore, we conclude that § 514 of the Soldiers' and Sailors' Civil Relief Act forbids New Mexico's requiring a non-resident serviceman to register his automobile so long as the automobile is registered in the serviceman's home State. If, however, the automobile is not registered in his home State, it is lawfully subject to registration in New Mexico and Section 64-6-1, N.M.S.A., 1953 Comp. (1969 Supp.) should be enforced. We note that since the Opinions discussed above were rendered, Section 64-6-1, **supra**, has been amended, increasing the time within which registration is not required from thirty to ninety days.

By: C. Emery Cuddy, Jr.

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