

Opinion No. 71-99

August 9, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. David Urioste Commissioner Department of Motor Vehicles Battan Memorial Building Santa Fe, N.M. 87501

QUESTIONS

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What portion, if any of the New Mexico automobile registration fees must be paid by a non-resident serviceman registering an automobile and/or a house trailer which have not been registered in his home State?

CONCLUSION

Only that portion of the registration fee which is essential to the functioning of the licensing and registration laws may be assessed.

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{*148} ANALYSIS

The answer to your question turns on Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.A.C. App. § 574), and the United States Supreme Court's interpretation of that section. Subsection (2) of § 514 reads as follows:

"(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."

Opinion of Attorney General No. 71-98, dated August 6, 1971, considered this same section and concluded on the basis of this provision that New Mexico could not require registration of the automobile of a non-resident serviceman so long as the automobile is registered in his home State. If, however, the automobile is not registered in the home State, New Mexico may require the automobile to be registered here.

Your question assumes no registration in the home State and thus registration may lawfully be required in New Mexico. The issue is what fees may properly be charged for that registration.

The case of **California v. Buzard**, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966) involved a question of what fees, licenses or excises the State of California would lawfully charge a nonresident serviceman whose car was required to be registered there since it had not been registered in his home State, in light of § 574 of the Soldiers' and Sailors' Civil Relief Act. Buzard did not contest the payment of the \$ 8.00 registration fee; he did, however, question the requirement that he pay 2% of the value of the car as a "license fee," which was a revenue measure, the proceeds of which went toward highway construction and maintenance.

The court said:

"It is plain at the outset that California may collect the 2% tax only if it is a 'license, fee, or excise' on a motor vehicle or its use. The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders . . .

Although the Revenue and Taxation Code expressly denominates the tax 'a license fee,' § 10751, there is no persuasive evidence Congress meant state labels to be conclusive; therefore, we must decide as a matter of federal law what 'licenses, fees, or excises' means in the statute. See *{*149} Storaasli v. Minnesota*, 283 U.S. 57, 62. There is nothing in the legislative history to show that Congress intended a tax not essential to assure registration, such as the California 'license fee,' to fall within the category of 'licenses, fees, or excises' host States might impose if home State registration was not effected. While it is true that a few state taxes in effect in 1944, like the California 2% 'license fee,' were imposed solely for revenue purposes, the great majority of state taxes also served to enforce registration and licensing statutes. No discussion of existing state laws appears in the Committee Reports. There is thus no indication that Congress was aware that any State required that servicemen contribute to the costs of highway maintenance without regard to the relevance of such requirements to the non-revenue purposes of state motor vehicle laws.

...

Taxes like the California 2% 'license fee' serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that non-resident servicemen were to be freed, in the main, without regard to whether their home States imposed or sought to collect such taxes from them. *Dameron v. Brodhead*, supra . . . Rather, reading the Act, as we must, 'with an eye friendly to those who dropped their affairs to answer their country's call,' *Le Maistre v. Leffers*, 333 U.S. 1, 6, **we conclude that subsection (2) (b) refers only to those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of nonresident servicemen.** Whether the 2% tax is within the reach of the federal immunity is thus not to be tested, as California argues, by whether its inclusion frustrates the administration of California's tax policies. The test, rather, is

whether the inclusion would deny the State power to enforce the nonrevenue provisions of state motor vehicle legislation." (Emphasis added.) 382 U.S. at 392-396.

The New Mexico statutes which specify the registration fees for the vehicles in question are Section 64-11-1.1, N.M.S.A., 1953 Comp., as amended (passenger vehicles) and Section 64-11-1.2(B) (house trailers). Section 64-11-12, N.M.S.A., 1953 Comp. (1969 Supp.) specifies the manner in which fees collected under Sections 64-11-1.1 and 64-11-1.2(B), **supra**, are to be distributed. In pertinent part it reads:

"The fees under the provisions of the . . . Act . . . shall be paid over to the state treasurer . . . Six percent thereof shall be transferred to the general fund for the administration of the department [of motor vehicles]. The remainder shall be distributed by the state treasurer . . . as follows: ' . . ."

The statute then sets forth a distribution scheme whereby the money remaining after the six percent is deducted is distributed to the state road fund, and to counties to be included in county road funds, and to municipalities to be used to construct or maintain streets, and to counties, school districts and municipalities, apparently to be used as general revenue.

In the opinion of this office, this distribution scheme clearly indicates that the vehicle registration fees in question are actually general revenue taxes, with the exception of the 6% which goes toward the administration of the Department of Motor Vehicles. Under the **Buzard** case, therefore, we are compelled to conclude that New Mexico cannot charge non-resident servicemen required to register either passenger cars or house trailers more than that amount which directly contributes to the administration and operation of the Department. At the present time, that limit is 6% of the statutory fee.

Insofar as this Opinion limits the language in Opinion of Attorney General No. 66-83, issued June 28, 1966, concerning the fees which can be charged non-resident servicemen required to register vehicles, it should be considered modified, but otherwise remains in effect.

{*150} This Opinion does not affect Opinion of Attorney General No. 61-78, issued August 31, 1961, concerning when house trailers become real property. Nor does it affect Opinion of Attorney General No. 65-131, issued July 14, 1965, and which modified Opinion of Attorney General No. 59-53, issued June 2, 1959, concerning when house trailers must be registered by nonresident military personnel.

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