

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

December 21, 1990

SUBJECT: Taxation and Revenue - Deferred Tax Payments
Provided By The Soldiers' And Sailors' Relief
Act.

- SYLLABI:
- (1) The payment of taxes on a motor vehicle may be stayed under Section 50 U.S.C.A. 560 for persons who are members of the armed forces. The tax collector, however, can have the need for the stay judicially determined.
 - (2) No authority exists for installment payments of property taxes due on motor vehicles.
 - (3) No penalties are due by reason of any stay, however, interest at the rate of 6% is due.
 - (4) As a general rule, property of a person in the armed forces should not be sold for nonpayment of taxes in the absence of a judicial order that authorizes the sale.

TO: Honorable Michael L. Horton
Assistant Comptroller General

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTIONS:

- 1. Can motor vehicle taxes be paid in installments?
- 2. Can a payment plan be worked out where the car can be licensed before all the tax is paid?
- 3. Do penalties accrue? Is maximum rate 6%?
- 4. Can you sell the property for nonpayment of tax?

APPLICABLE LAW: 50 U.S.C.A. 560 and 590, S. C. Code Ann.
Section 12-37-2610, et seq.

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DISCUSSION:

S.C. Code Ann. Section 12-37-2610 establishes the tax year for motor vehicles licensed by the South Carolina Department of Highways and Public Transportation. The statutes require payment of property taxes as a condition for the issuance of the motor vehicle license. The primary question is whether this condition is stayed by federal law. In the opinion of this office, it is stayed.

Section 50 U.S.C.A. 560 provides in part that:

No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. . .

The substantive question is whether the right of a service person to license a vehicle can be negated by the requirement to pay the tax. The case of California v. Buzzard, 86 S.Ct. 478, 382 U.S. 386, 15 L.Ed.2d 436, closely parallels the issue here presented. In that case, a nonresident service person in California was refused the right to register a vehicle in California until property taxes had been paid. The Court held that the statute precluded the State from requiring the tax payment as a condition to license the vehicle. The service person's vehicle in that case was exempt from taxation and those here involved are subject to taxation. Nonetheless, because the right to license the vehicle was conditioned on the payment of the tax, it is evident that the purpose of such a requirement was to aid the collection of a tax.

It could be argued that the denial of the right to license the vehicle does not constitute "any proceeding or action" to sell the vehicle to enforce collection of a tax. It must be concluded, however, that it is "a proceeding or action" to deny the service person or his family the use of the vehicle upon public highways. It would be a contradiction to hold that the vehicle could not be sold to enforce payment of taxes while holding that its use could be denied to enforce payment.

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The Soldiers' and Sailors' Relief Act is to be liberally construed in favor of the service person. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261, (S.C. App. 1989). (For other cases see 3 F.D.P.2d, Armed Services, Key 34.1, et seq.)

The payment of a tax by service persons may when necessary be stayed under 50 U.S.C.A. 560. The tax collector, however, may question the need for the stay and have the Court determine if the same is warranted.

Question 1. We know of no authority to pay property taxes in installments.

Question 2. See above.

Question 3. No penalties can be levied under 50 U.S.C.A. 560. Interest at the rate of 6% is due.

Question 4. No. See above.

CONCLUSION:

(1) The payment of taxes on a motor vehicle may be stayed under Section 50 U.S.C.A. 560 for persons who are members of the armed forces. The tax collector, however, can have the need for the stay judicially determined.

(2) No authority exists for installment payments of property taxes due on motor vehicles.

(3) No penalties are due by reason of any stay, however, interest at the rate of 6% is due.

(4) As a general rule, property of a person in the armed forces should not be sold for nonpayment of taxes in the absence of a judicial order that authorizes the sale.

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