

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

November 20, 1990

SUBJECT: Taxation and Revenue - Application of 50 U.S.C.A. 574 to the taxation of the personal property of a nonresident of this State who is called to active duty from the reserves or national guard of another state.

SYLLABUS: The motor vehicle of a nonresident service person located in South Carolina is not subject to taxation when the vehicle is licensed and registered in South Carolina or the home state of the service person. An exception, however, is personal property that is used in a trade or business.

TO: Honorable Pauline S. Koger  
Charleston County Auditor

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

QUESTION: As understood, a person who is a resident and member of the reserves or the national guard of another state was called to active duty and is presently assigned to a base in South Carolina. Is the person's motor vehicle subject to taxation when licensed and registered with the South Carolina Department of Highways and Public Transportation?

APPLICABLE LAW: 50 U.S.C.A. 574.

DISCUSSION:

We have long advised<sup>1</sup> that the personal property of a nonresident person who is within this State by reason of military orders is not subject to property taxation.

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<sup>1</sup>See OAG July 13, 1970.

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Under the provisions of the Soldiers' and Sailors' Relief Act, 50 U.S.C.A. 574, the personal property of a nonresident service person who is in South Carolina "shall not be deemed to be located or present in or to have a situs for taxation in [South Carolina]."

The property is thus not subject to taxation. Sullivan v. United States, 89 S.Ct. 1648, 395 U.S. 169, 23 L.Ed.2d 182 and California v. Buzzard, 86 S.Ct. 478, 382 U.S. 386, 15 L.Ed.2d 436. An exception to the above is personal property that is used in a trade or business. Personal property that is so used is subject to taxation.

Additionally, in California v. Buzzard, supra, the Court held that the property (not used in a trade or business) was not subject to taxation even though the vehicle may be required to be registered in the state in which the service person is located.<sup>2</sup>

Further, the Soldiers' and Sailors' Relief Act would apply with like effect to those who are called to active duty from the reserves or national guard.

CONCLUSION:

The motor vehicle of a nonresident service person located in South Carolina is not subject to taxation when the vehicle is licensed and registered in South Carolina or the home state of the service person. An exception, however, is personal property that is used in a trade or business.

JLAJr:wcg

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<sup>2</sup>The vehicle is not required to be registered and licensed in South Carolina if registered and licensed in the service person's home state. Section 2 of 50 U.S.C.A. 574.