

C. J. [unclear]

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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 55-92-1058

August 27, 1985

SUBJECT: Taxation & Revenue - Taxation Of Property
Owned With Non-Resident Persons In Military
Service.

SYLLABUS: The interest owned in personal property by a
person who is not a non-resident person in
military service is subject to ad valorem
taxation notwithstanding that an interest in
the property may also be jointly owned by a
non-resident person who is in military
service.

TO: Honorable Emily Jackson
Auditor, Sumter County

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

QUESTION: What is the tax status of the interest in
personal property of a person, in example a wife, that is
owned with another, in example, her husband, who is a
non-resident person, in military service?

APPLICABLE LAW: 50 U.S.C.A. 511, 50 U.S.C.A. 574 and §
12-37-710.

DISCUSSION:

The Federal statute, 50 U.S.C.A. 574, exempts from taxation
the personal property of a non-resident service person who
is within this state. The applicable language is that:

"... For purposes of taxation in respect
of personal property ... of any such
person by any State, Territory,
possession or political subdivision of
any of the foregoing, ... of which such
person is not a resident or in which he
is not domiciled ... personal property
shall not be deemed to be located or
present in or to have a situs for
taxation in such State, Territory,
possession or political subdivision ..."

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An exception is personal property used in a business. The personal property of such service persons is thus exempt from ad valorem taxation when not used in business. Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041; 32 A.L.R. 2d 612; California v. Buzzard, 382 U.S. 386, 869 S.Ct. 478, 15 L.Ed.2d 436. Notwithstanding, the interest in personal property not that of the service person, although jointly owned, is taxable. The Soldiers' and Sailors' Relief Act applies only to:

"The term 'persons in military service', and the term 'persons in the military service of the United States', as used in this Act [sections 501-548 and 560-590 of this Appendix], shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy" 50 U.S.C.A. 511.

The spouse of a non-resident person who is in the military service is not, however, included within the definition. Wanner v. Glen Ellen Corporation, 373 F.Supp. 983. The personal property of such persons is therefore subject to taxation. See § 12-37-710.

CONCLUSION:

The interest owned in personal property by a person who is not a non-resident person in military service is subject to ad valorem taxation notwithstanding that an interest in the property may also be jointly owned by a non-resident person who is in military service.

JLAJr/jws