

1974 WL 27993 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 29, 1974

*1 A tax exemption afforded to nonresidents should not be granted where the person claiming to be the nonresident is registered to vote in this State. While the registration is not conclusive of residency for tax purposes, the same should be given great weight.

Mr. James A. Walton
Director
Sales and Use Tax Division
South Carolina Tax Commission
Columbia, South Carolina

Dear Mr. Walton:

Reference is made to your request for the opinion of this office of whether a person in military service who is registered to vote in this State can be a nonresident of this State for tax purposes. The significance of the nonresident status for tax purposes is that neither the property nor income of such person is subject to State or local taxation.

The inquiry is submitted without any facts other than that the person is qualified to vote in this State and has signed an affidavit for tax purposes that he is a legal resident of the State of North Carolina. The residency requirements to vote in this State are found in Article 2, Section 4 of the Constitution and the term 'resided' as therein contained has been judicially construed to mean 'domicile.' [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13. In that case the Court comments as follows:

'While it has been held that a statutory provision that a person shall be taxed where he resides does not mean where he resides for purposes of voting, it has been laid down broadly that the residence required to make one liable for a personal tax is precisely the same in kind as that which will entitle such person to vote in a particular place.'

The fact that the voter is in military service does not affect the right to vote provided, of course, that the residency requirements are met.

'We stress—and this is a theme to be reiterated—that Texas has the right to require that all military personnel enrolled to vote be bona fide residents of the community. But if they are in facts residents, with the intention of making Texas their home indefinitely, they, as all other qualified residents have a right to an equal opportunity for political representation.' [Sergeant Carrington v. Rash](#), 380 U. S. 89, 13 L. Ed. 2d 675, 85 S. Ct. 775. (See also 25 Am. Jur. 2d, Elections, Sections 66-75.)

Here, the person has stated two conflicting positions under oath in the same document as to his residency, therefore, neither can be conclusive of his actual legal residence. Further factual information is needed before an authoritative opinion can be stated. It is well settled however that the language of a statutory exemption from taxation must be satisfied before the exemption can be granted.

Under the limited facts available and in the light of conflicting statements, it would appear that the exemption from taxation should be denied until further and more convincing evidence of the residency status is furnished.

Yours very truly,

***2** Joe L. Allen, Jr.
Assistant Attorney General

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