1973 WL 27021 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 6, 1973

***1** The license required by Section 46-100, et seq., is now required from nonresident military personnel because of Act No. 1389, Acts of 1972, however the license cannot be used to subject the mobile home of such persons to property taxation. ??

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Dear Mr. Smythe:
Reference is made to your letter of February 2, 1973, wherein request is made for the opinion of this office of whether the license provided for by Section 46-100, et seq., of the Code is to be obtained by nonresident military personnel present in this State by reason of military orders. The license is required by the Section for mobile homes as a condition precedent to electrical hookup and the primary purpose of the license was to insure the payment and collection of the property tax on the mobile home, (See 1964-65, OAG, No. 1955, p. 263)

The General Assembly, however, by Act No. 1389, Acts of 1972, declared the following as State policy:
'SECTION 3. State policy—rules and regulations.—(a) Mobile homes, and their integral parts, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing, and electrical systems) like other finished products having concealed vital parts may present hazards to the life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of the State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes which are not so constructed as to provide reasonable safety and protection to their owners and users.'

The Act in Section 7 further provides:
'SECTION 7. When electricity not to be supplied.—In Municipalities and Counties where building, construction or tax permits are issued, no supplier of electricity in this state shall connect electrical power to any mobile home manufactured after April 1, 1972, unless the owner of such mobile home first presents to the supplier of electricity a permit which may be part of a building, construction, or tax permit from a duly authorized officer of a Municipality or County where the mobile home is located, that the mobile home meets the requirements of this Act. A sworn affidavit or other proof from the owner of the mobile home that the mobile home bears the label or seal or compliance number of an approved independent third-party testing and inspecting agent, or of a foreign state granted reciprocity herein is sufficient evidence of compliance for the Municipal or County official to issue the electrical permit required.

The governing bodies of Municipalities and Counties of this state shall designate an officer to issue the permit herein required.

***2** This section shall not apply to any mobile home if it has been connected to electricity prior to April 1, 1972. An affidavit of the owner of the mobile home that the mobile home has been connected prior to this date is satisfactory evidence for the officer of the Municipality or County to issue the certificate required herein.'

It is thus apparent that the General Assembly has by the 1972 Act now restricted the license provided for in Section 46-100 to those mobile homes that satisfy the State's safety standard.

The Soldiers' and Sailors' Relief Act, 50 U.S.C.A. 574, generally precludes the taxation of the personal property of nonresident military personnel stationed in this State, however, the 1972 Act is an exercise of the State's police or regulatory power to protect persons that reside in mobile homes and is not a revenue measure.

In the case of California v. Buzard, 86 S. Ct. 478, 382 U.S. 386, 15 L. Ed. 2d. 436, the Court was concerned with taxes and registration fees for a motor vehicle of a nonresident person in military service and stationed in California. The Court stated: '* * * 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 powers to enforce the non-revenue provisions of state motor vehicle legislation.'

It cannot be said that the policy of the State is to treat the safety of nonresident servicemen and their families that reside in mobile homes any different than that of any other person that resides in mobile homes. Thus applying the rationale in the case, California v. Buzard, it is the opinion of this office that the license required by Section 46-100 is now, because of the 1972 Act, applicable to mobile homes of nonresident servicemen. The license is required only, however, for the safety regulations of the mobile home and cannot be used to require the serviceman to pay a tax on the mobile home when the same is exempt therefrom by Federal law.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General
South Carolina Tax Commission

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