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DARRELL F. SMITH, THE HONORABLE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

March 17, 1966

DEPARTMENT OF LAW OPINION NO. 66-12 (R-69)

REQUESTED BY: The Honorable Robert K. Corbin
Maricopa County Attorney

QUESTIONS:

1. Are non-resident servicemen exempt from paying Arizona registration fees and lieu taxes which have been assessed against their automobile and house trailers?
2. If the answer is "no", is the County Assessor obligated to refund lieu taxes or registration fees already paid on such automobiles and house trailers for the year 1966?

ANSWERS:

1. Non-resident servicemen are exempt from paying Arizona lieu taxes, but are not exempt from paying the registration fees which have been assessed against their automobiles and house trailers.
2. The County Assessor is not obligated to refund lieu taxes unless the taxpayer has obtained a judgment for such sum.

QUESTION NO. 1: Title 50, U. S. C. A., 574 (1), as amended, a section of what is commonly referred to as the Soldiers and Sailors Civil Relief Act, provides in part:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not

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be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent . . ."

This statute was recently interpreted in California v. Buzard, 86 S. Ct. 478 (1966). Therein the question arose on whether the Soldiers and Sailors Civil Relief Act precluded California from imposing automobile registration fees and lieu taxes on non-resident servicemen. With reference to the California registration fee on motor vehicles, the court stated:

". . . Although little appears in the legislative history to explain the proviso, Congress was clearly concerned that service men stationed away from their home State should not drive unregistered or unlicensed motor vehicles. Every State required in 1944, and requires now, that motor vehicles using its highways be registered and bear license plates. Such requirements are designed to facilitate the identification of vehicle owners and the investigation of accidents, thefts, traffic violations and other violations of law. Commonly, if not universally, the statutes imposing the requirements of registration or licensing also prescribe fees which must be paid to authorize state officials to issue the necessary documents and plates. To assure that servicemen comply with the registration and licensing laws of some State, whether of their home State or the host State, we

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construe the phrase 'license, fee, or excise required by the State ***' as equivalent to 'license, fee, or excise of the State.***' Thus read, the phrase merely indicates Congress' recognition that, in one form or another, all States have laws governing the registration and licensing of motor vehicles, and that such laws impose certain taxes as conditions thereof. The serviceman who has not registered his car and obtained license plates under the laws of his home State, whatever the reason, may be required by the host State to register and license the car under its laws. (Emphasis supplied.)

However, in determining that the California lieu tax could not be imposed against vehicles of a non-resident serviceman, the court stated:

" . . . The very purpose of Sec. 514 (now Sec. 574, as amended, quoted above) in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders. The statute operates whether or not the home State imposes or assesses such taxes against him. As we said in *Dameron v. Brodhead*, 345 U.S. 322, 326, 73 S.Ct. 721, 724, 97 L. Ed 1041, '***though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole

right of taxation to the state of original residence whether or not that state exercised the right. Motor vehicles were included as personal property covered by the statute. . . "

Without examining the nature of the California registration fee, the court by way of dicta in the Buzard case indicated that the Soldiers and Sailors Civil Relief Act did not propose to permit servicemen to escape the obligation of registering and licensing their motor vehicles. The Buzard case indicates that a host state may impose a registration fee upon vehicles of non-resident servicemen, which vehicles are not registered in the serviceman's home state, if the fee is imposed for the purpose of assuring registration.

Arizona provides for a registration fee on motor vehicles in A. R. S. Sec. 28-205. A(18), as amended 1962, which provides in part:

"A. The following fees shall be paid to the vehicle division:

* * *

18. For the registration of any motor vehicle, trailer, or semi-trailer, if registered prior to July 1, six dollars and twenty-five cents, and if registered prior to July 1, six dollars and twenty-five cents, and if registered after July 1, four dollars and seventy-five cents."
(Emphasis supplied.)

As the Buzard case did not exempt a non-resident serviceman from registering his vehicle, which vehicle has not been registered in the serviceman's home state, it appears that a non-resident serviceman who has not registered his vehicle in his home state, may, upon registering his vehicle for use in Arizona, be required to pay the Arizona registration fee imposed by A. R. S. Sec. 28-205. A(18).

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In addition to the registration fee on vehicles, the Constitution of Arizona, Article 9, Sec. 11, imposes a license tax on vehicles registered for operation on the highways in Arizona, which license tax is "in lieu of all ad valorem property taxes on any vehicle subject to such license tax." This tax is substantially the same as the California tax imposed by California statutes (West's Cal. Revenue and Taxation Code, Secs. 10751, 10752 and 10758). Both taxes are in lieu of ad valorem or property taxes and are based on the value of the vehicle.

From the language of the Buzard case, it is patently clear that the lieu tax imposed by the Arizona Constitution may not be assessed against non-resident servicemen.

For purposes of clarification, it is necessary to point out that the Soldiers and Sailors Civil Relief Act, 50 U. S. C. A., Sec. 574, as amended 1962, also provides the following:

"... nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction."

Therefore, a non-resident serviceman who has a vehicle which is used in or arises from a trade or business in Arizona may be required to pay both registration fees and lieu taxes on such vehicle.

QUESTION NO. 2: A. R. S. Sec. 42-204(C) provides:

"C. After payment of the tax, an action may be maintained to recover any tax illegally collected, and if the tax due is determined to be less than the amount paid, the excess shall be refunded in the manner provided by this chapter."

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However, before any tax refund may be claimed, the tax must have been paid under protest in the first instance, as an illegal tax paid without objection is paid voluntarily and does not give rise to any recovery. In Glendale Union High School v. Peoria School District No. 11, 55 Ariz. 151, 154, 99 P. 2d 482 (1940), the court stated:

" . . . that when a taxpayer pays an illegal tax, without any objection, no recovery may be had, and this is in line with the overwhelming weight of authority in every state in the union. . . "

In Pima County v. Weddle, 54 Ariz. 525, 529, 97 P. 2d 531, the court referring to its decision in Gibson Abstract Co. v. Cochise County, 12 Ariz. 158, 100 Pac. 453 stated:

"This statute does not expressly require the taxpayer to protest at the time of his payment as a condition precedent to the maintenance of his action under said paragraph 4939, but, in order to remove such payments of taxes from the category of voluntary payments to the county, the taxpayer must, in some manner, unequivocally make known his purpose of paying the excess is to permit him to contest the legality of the excess in court. Otherwise his payment would be deemed voluntary, and no recovery could be had against the county."

From the foregoing citations it appears that the County Assessor has no duty or authority to refund lieu taxes paid by non-resident servicemen who did not protest the tax at the time of making payment.

With reference to a non-resident serviceman who at the time of making payment protested the imposition of lieu taxes on his vehicle, he has cause of action under A. R. S. Sec. 42-204(c) for recovery of such taxes. However, we find no precedent or authority which would permit the County

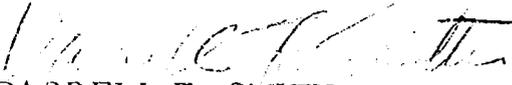
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Assessor to refund the taxes in the absence of judicial proceedings. In Filer v. Maricopa County, 68 Ariz. 11, 14, 198 P. 2d 131, the court stated:

" . . . The county treasurer has no authority to refund taxes once he has issued receipts for the same except under lawful order of the proper authority . . . "

It appears that the proper authority in the instant situation would be a court of competent jurisdiction. Therefore, it appears that the County Assessor has no obligation, duty or authority to refund the lieu taxes in the absence of appropriate jurisdictional proceedings.

Respectfully submitted,


DARRELL F. SMITH
The Attorney General

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