



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

August 25, 1986

The Honorable Bill English
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I86-092 (R86-008)

Dear Representative English:

You have requested our opinion concerning the application of the Soldiers and Sailors Civil Relief Act, 50 App. U.S.C. § 574, to the taxation of mobile homes. You ask whether or not a mobile home, owned as community property or owned jointly or as tenants in common by a person who is in the armed forces with a person who is not, is subject to state property taxation.

A mobile home with respect to which an affidavit of affixture has been recorded pursuant to A.R.S. § 42-641.01 and which has been placed on the real and secured property tax roll is taxable as a real property improvement and is listed on the real and secured property tax roll. A.R.S. § 42-642(C) and A.R.S. § 42-641.01(C). For a mobile home to be taxed as a real property improvement, the person owning the mobile home must own the land to which it has been permanently affixed and must file an affidavit of affixture with the County Recorder of the county in which the property is located. In order to file the affidavit of affixture, the unit must be a multiple section mobile home. "'Permanently affixed' means the installation of a mobile home on real property owned by the owner of the mobile home." A.R.S. § 42-641(3).

Every mobile home with respect to which an affidavit of affixture has not been recorded pursuant to A.R.S. § 42-641.01 shall be subject to ad valorem tax to be assessed

The Honorable Bill English
August 25, 1986
I86-092
Page 2

and collected in the same manner as other personal property which is listed on the unsecured property tax roll. A.R.S. § 42-642(A). The criteria for determining whether or not property is taxable as unsecured personal property under Arizona law is whether or not this particular personal property is located within the taxing jurisdiction, except that property in transit through Arizona is not subject to taxation in this state. A.R.S. § 42-601(A).

In order to relieve persons serving in the armed forces of the United States from the burden of multiple state demands for taxes because of assignment to military duty in states other than the soldiers' state of domicile, Congress has provided in 50 App. U.S.C. § 574(1) that:

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 persons shall not 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 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. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be

The Honorable Bill English
August 25, 1986
I86-092
Page 3

deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or district. . . .

Under the above quoted portion of 50 App. U.S.C. § 574(1), which is a part of the Soldiers and Sailors Relief Act, for purposes of taxation of personal property a person in the military service shall not be deemed to have lost his domicile in any state solely by reason of being absent in compliance with military orders and his personal property shall not be deemed to be present in a state in which he is not domiciled. Consequently, the host state in which the person in military service is present solely by reason of military orders cannot impose a personal property tax upon such person's personal property.

Therefore, if the mobile home owned by such a person in Arizona is personal property, the State of Arizona and its political subdivisions cannot impose a property tax on that mobile home. The apparent conflict between the Soldiers and Sailors Relief Act and A.R.S. § 42-642(A) is resolved by art. VI of the United States Constitution, which provides that the Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land.

There are three situations in which mobile homes owned by military personnel may be taxed by Arizona. First, the language of 50 App. U.S.C. § 574(1) quoted herein clearly indicates that it applies only to personal property. Consequently, if a mobile home becomes real property, then it is subject to taxation by the State of Arizona even though it is owned by a person in the military service who is present in Arizona solely by reason of military orders. Secondly, states and their political subdivisions are not prohibited from taxing personal property of a serviceman present in the state solely by reason of military orders when such personal property is used in a trade or business. 50 App. U.S.C. § 574(1). Thirdly, if the serviceman was domiciled in Arizona when he entered military service and has not changed his domicile within the meaning of the Soldiers and Sailors Relief Act, then his mobile home would be subject to property taxation by the State of Arizona. Arizona does not, however, have the power to tax mobile homes located on military reservations over which the United States has exclusive

The Honorable Bill English
August 25, 1986
186-092
Page 4

jurisdiction. Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 74 L.Ed. 1091 (1930).

Whether or not a mobile home is personal property or real property for purposes of the Soldiers and Sailors Relief Act is a question of Federal Law. United States v. Chester County Board of Assessment and Revision of Taxes, 281 F.Supp. 1001 (D.C. Penn. 1968). The mobile home will be regarded as personal property under the Soldiers and Sailors Relief Act as long as it retains its characteristic of mobility. United States v. Shelby County, 385 F.Supp. 1187 (1974); United States v. Chester County Board of Assessment and Revision of Taxes. If wheels are left on, the mobile home merely rests on concrete blocks and is attached to utilities, the mobile home will not be regarded as real property. Snapp v. Neal, 382 U.S. 397, 85 S.Ct. 485, 15 L.Ed.2d 445 (1966).

The next question is whether the joint interest of someone having a joint interest in a mobile home with a person in military service, who is present in Arizona solely by reason of military orders, is subject to taxation as personal property by the State of Arizona. The practice in Arizona and in some other states is to tax mobile homes to the extent of the joint interest of the non-military owner. See Comment, State Power to Tax the Service Member: An Examination of Section 514 of the Soldiers and Sailors Relief Act, 36 Mil.L.Rev. 123 (1967). No appellate court has yet decided whether or not the joint interest in such property of the joint owner who is not in the military service is entitled to tax relief in the host state under the Soldiers and Sailors Relief Act.

However, a similar question has been decided in Arizona with respect to the veterans exemption. In Oglesby v. Poage, 45 Ariz. 23, 40 P.2d 90 (1935), the court held that the veteran's exemption under art. IX, § 2 of the Arizona Constitution only applied to the veteran's undivided half interest in the property and it did not apply to the wife's interest in the community estate. The Attorney General has reached the same conclusion with respect to the application of the veterans exemption to property held by a veteran and his spouse in joint tenancy. Ariz.Atty.Gen.Op. 62-19.

One indication that Congress did not intend for the interest of the wife or the other joint owner of the property

The Honorable Bill English
August 25, 1986
I86-092
Page 5

to be exempt from taxation is found in the failure of 50 App. U.S.C. § 574 to provide that the benefits of this section applied to military dependents. Congress did provide for application of certain statutory benefits to dependents in 50 App. U.S.C. § 536 in respect to contracts, leases, mortgages and assignments. However, in 50 App. U.S.C. § 560, Congress did provide for a stay of actions to collect taxes in respect to property used as a residence by the serviceman or his dependents then and at the commencement of his military service in cases where the serviceman's ability to pay taxes was materially affected by his military service.

The question whether or not Congress intended to exempt from taxation the interest of the person who held property jointly with the serviceman is not entirely free of doubt. According to dicta in Dameron v. Brodhead, 345 U.S. 322, 326, 73 S.Ct. 721, 724, 97 L.Ed. 1041, 1046 (1953):

Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces.

The Arizona practice of taxing the interest of the joint owner does alter the burdens and benefits for many of those in the military establishment. Another indication of the liberal interpretation of the Soldiers and Sailors Relief Act is the statement in United States v. Onslow County Board of Education, 728 F.2d 628 (4th Cir. 1984) that the Soldiers and Sailors Relief Act must be read with an eye friendly to those who drop their affairs to answer their country's call. However, in view of Congress' failure to include language specifically extending the tax benefits to a person owning property jointly with a serviceman, it is our conclusion that the joint interest of such persons is taxable under Arizona law.

Finally, you have asked whether legislation providing for tax exemptions from property tax for mobile homes owned jointly by a military and a non-military person would be constitutional. A state constitutional amendment would be necessary in order for such legislation to be constitutional. Art. IX, § 2 of the Arizona Constitution is the provision which authorizes the legislature to provide for property tax

The Honorable Bill English
August 25, 1986
186-092
Page 6

exemptions. The only exemptions which the legislature is authorized to provide for under art. IX, § 2 of the Arizona Constitution relate to the property of educational, charitable and religious associations or institutions not used or held for profit. In Kunes v. Samaritan Health Services, 121 Ariz. 41, 590 P.2d 1359 (1979) the court held that the legislature could not exempt from ad valorem taxation any property or class of property not specified in the constitution. A trailer to be used by a serviceman and his family as a residence does not fall into any of the categories set out in art. IX, § 2.

Sincerely,



BOB CORBIN
Attorney General

BC:JDW:sru