

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 46

MILITARY PERSONNEL - Exempt from license fees imposed by section 61-3-533, MCA;

MILITARY PERSONNEL - Not exempt from fees imposed by sections 61-3-321 and 61-3-502, MCA;

MOTOR VEHICLE REGISTRATION - Military personnel exempt from license fees imposed by section 61-3-533, MCA;

MOTOR VEHICLE REGISTRATION - Military personnel not exempt from new car sales tax imposed by section 61-3-502, MCA, or registration fees under section 61-3-321, MCA;

TAXATION - Military personnel exempt from motor vehicle license fees not essential to State's licensing and registration laws;

MONTANA CODE ANNOTATED - Sections 61-3-321, 61-3-502, 61-3-533;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 45;

UNITED STATES CODE - Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 574.

- HELD: 1. Military personnel serving on active duty on a military installation in Montana are exempt from the new motor vehicle fees imposed by section 61-3-533, MCA, whether or not they have paid such fees in their home state.
2. Such military personnel are not exempt from the sales tax on new motor vehicles imposed by section 61-3-502, MCA.

20 January 1982

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

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Dear Mr. Bourdeau:

You have requested my opinion concerning:

Whether military personnel serving on active duty on Malmstrom Air Force Base or any other similar installation in Montana can be required to pay the new fees on motor vehicles, or whether the exception under the Soldiers' and Sailors' Civil Relief Act applies?

The Soldiers' and Sailors' Civil Relief Act of 1940 is codified at 50 U.S.C. App. §§ 501-591. The specific section in question here is section 574 which provides nonresident servicemen stationed in a state under military orders with widespread immunity from the personal property and income taxation of that state. Section 574(2) further states:

(a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to license, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, that the license, fee, or excise required by the state...of which the person is a resident or in which he is domiciled has been paid.

Your question arises due to the implementation of a new vehicle fee licensing system effective January 1, 1982, based on vehicle age and weight. The previous licensing system was a tax on personal property and therefore, under section 574, military personnel were exempt and required to pay only the registration fee provided for in section 61-3-321, MCA. Whether or not military personnel are also exempt under the flat fee licensing system requires review of the case law surrounding section 574. The section has been the subject of a good deal of litigation and the decisions arising from that litigation provide guidance for our determination.

The leading case involving section 574 and motor vehicles is California v. Buzard, 382 U.S. 386 (1966). In Buzard, the Court ruled that a resident of Washington, stationed in California under military orders, was exempt from a California "license fee"

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calculated at 2% of a vehicle's market value. The fee was "imposed...in lieu of all taxes according to value levied for state or local purposes on vehicles...subject to registration under the Vehicle Code...." Id. at 389. The Court ruled that the purpose of section 574 (there codified as section 514) was to relieve a serviceman of the burden of supporting a state government where he was acting solely in compliance with military orders. The phrase "license, fee, or excise required by the State" in section 574(2) indicated only Congressional recognition of the need to register cars and that certain fees are necessary to accomplish this. The essential purpose of the section then is to assure that "servicemen comply with the registration and licensing laws of some states, whether their home state or the host state...." Id. at 392. Any law which requires fees beyond that intention is not to be applied to servicemen.

[W]e must consider the overall purpose of § 514 [now § 574] as well as the words of subsection (2)(b). Taxes like the California 2% "license fee" serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home states imposed or sought to collect such taxes from them.... 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.

Id. at 395. The Court also went on to note that the registration and license statutes were separate sections and clearly severable.

Applying this rationale to Montana's new system raises several points of similarity. Montana's registration and license fees are separate statutes and the registration fee can clearly be applied without the license fee. The new fee system is "in lieu of a property tax," 1981 Mont. Laws, ch. 614, § 2, as was the California system. The money generated by the fee

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is to be used in the same manner as the previous property tax and thus serves primarily a revenue purpose. As a recent Attorney General's Opinion recognized, the fee system "is more akin to a property tax than a registration fee." 39 Op. Att'y Gen. No. 45 (1981). Thus while the title for the new licensing system has been changed, the underlying purposes have not.

A few other questions have arisen in conjunction with your opinion request. The first involves whether or not a serviceman who has not paid any taxes or licensing fees in his home state may be required to pay those fees in Montana. The answer was given in a companion case to Buzard, Snapp v. Neal, 382 U.S. 397 (1966). In Snapp, the Court ruled that "failure to pay the motor vehicle license, fee, or excise of the home state entitles the host state only to exact motor vehicle taxes qualifying as licenses, fees, or excises," not any ad valorem taxes imposed by the state. Id. at 398. [Emphasis added.]

This means that only those fees which are essential to the administration of the states' licensing and registration laws can be imposed. In Montana those fees are set out in section 61-3-321, MCA.

The second question is whether or not the sales tax on new motor vehicles imposed by section 61-3-502, MCA, can be applied to military personnel. The answer is that military personnel are not exempt from this tax. In the case of U.S. v. Sullivan, 270 F. Supp. 236 (D. Conn. 1967), aff'd 398 F.2d 672 (1967), reversed on other grounds, 395 U.S. 169, 184 (1969), the Court ruled that section 514 (now section 574) "does not exempt servicemen from the sales...taxes imposed by Connecticut."

THEREFORE, IT IS MY OPINION:

1. Military personnel serving on active duty on a military installation in Montana are exempt from the new motor vehicle fees imposed by section 61-3-533, MCA, whether or not they have paid such fees in their home state.

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2. Such military personnel are not exempt from the sales tax on new motor vehicles imposed by section 61-3-502, MCA.

Very truly yours,

MIKE GREELY  
Attorney General