

Dear Mr. Goza:

You have submitted a letter from the army air force at the army air base, Great Falls, Montana, wherein the following inquiry is made:

May the personal property and effects belonging to military personnel who, although legally domiciled in another state, are temporarily residing in Montana by reason of military necessity, be legally assessed for taxation purposes in Montana?

The letter also calls attention to the provisions of the Soldiers' and Sailors' Civil Relief Act, as amended. The pertinent part of said act, Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by Public Law 415, Seventy-eighth Congress, approved July 3, 1944, reads as follows:

**"Soldiers' and Sailors' Civil Relief Act—Residence for Taxation
Chapter 397—Public Law 415**

"An act to amend section 514 of the Soldiers' and Sailors' Relief Act.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

"Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is hereby amended to read as follows:

"(1) For the purpose 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 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

Opinion No. 42.

**Soldiers' and Sailors' Civil Relief Act
Taxation—State of Montana—Political
Subdivisions Thereof—Veterans**

Held: Under the provisions of the above quoted act of the Congress of the United States and the Constitution, it is my opinion that the personal property belonging to persons who are in the military or naval services, and who are not legal residents of the State of Montana, although stationed temporarily in the State of Montana, is not subject to taxation by the State of Montana, or any political subdivision thereof.

May 24, 1945.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

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 deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision or district. . . . This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax prior to October 6, 1942.

“(2) When used in this section, (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 licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.”

“Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

“Approved July 3, 1944.” (Emphasis mine.)

The foregoing act of Congress of the United States made in pursuance of the Constitution of the United States is the supreme law of the land. Article VI of the Constitution of the United States in part provides:

“This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every

state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” (Emphasis mine.)

I am not passing upon the question of the right of a person in the military or naval service to a suspension or deferment of his taxes during the period of his service, either under the “Soldiers’ and Sailors’ Civil Relief Act” or under the Montana statutes, Section 2236, Revised Codes of Montana, 1935, or Chapter 181, Laws of 1943, which grants a suspension of the payment of taxes.

I am only passing upon the question of the authority and legality of the State of Montana or a county thereof, or any political subdivision thereof to assess or collect a tax on the personal property belonging to a person who is in the military or naval services of the United States, and who is legally a resident of, or domiciled in another state, and is temporarily in Montana by reason of military or naval service.

Under the provisions of the above quoted act of the Congress of the United States and the Constitution, it is my opinion the personal property belonging to persons who are in the military or naval services, and who are not legal residents of the State of Montana, although stationed temporarily in the State of Montana, is not subject to taxation by the State of Montana or any political subdivision thereof.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General