

Opinion No. 66-41

April 6, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Mr. Bob White, Director, Department of Aviation, P. O. Box 579, Santa Fe, New Mexico

QUESTION

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Are nonresident military personnel stationed within this state exempt from the terms of the Aircraft Registration Act (Sections 44-5-1, et seq., N.M.S.A., 1953 Compilation (P.S.)) by reason of the provisions of the Soldiers' and Sailors' Relief Act?

CONCLUSION

Yes; see analysis.

OPINION

{*48} ANALYSIS

The Aircraft Registration Act appears to have a twofold purpose. Section 44-5-2 N.M.S.A., 1953 Compilation (P.S.) defines the purpose as follows:

"The purpose of this act is to provide for registration and uniform taxation of aircraft based or hangared in New Mexico."

The taxation purpose of the Aircraft Registration Act is further amplified in Section 44-5-5 N.M.S.A., {*49} 1953 Compilation (P.S.) which provides as follows:

"All aircraft shall be registered by the owner or lessee thereof prior to March 1st of each year. Any aircraft not registered prior to March 1st shall be subject to personal property tax. Aircraft purchased new or entering the state after March 1st shall be registered within sixty days after purchase or entering the state as the case may be."

and Section 44-5-14 N.M.S.A., 1953 Compilation (P.S.) which provides:

"All fees collected under the provisions of this act shall be remitted to the county treasurer in the county where application is made. The county treasurer shall remit to the state aviation board \$ 5.00 for each such license which sum shall be used by the

board to effect the provisions of this act. The county treasurer shall credit the balance of these fees in the county in the same manner as provided for personal property taxes."

Section 44-5-14, supra, makes it clear that with the exception of a \$ 5.00 fee which the county treasurer is to remit to the State Aviation Board, all fees collected pursuant to the terms of this Act shall be in lieu of personal property taxes on the plane. The \$ 5.00 fee, however, is for the license which is issued to the person seeking to register the plane.

The question before us this time is whether or not a person who resides in this state solely in compliance with orders from the military and whose permanent residence is in another state or territory is required to comply with the provisions of this Act.

Section 574 of the Soldiers' and Sailors' Relief Act, insofar as pertinent here, provides:

"(1) . . . For the purposes of taxation in respect to 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. . . .

"(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. . . ."

California v. Buzard, 86 S. Ct. 478, decided by the United States Supreme Court on January 18, 1966, dealt with a matter almost identical to that which we have under consideration here. The fact situation there involved a serviceman stationed in the State of California, whose personal residence was in Washington and involved the question of whether that person would be required to pay the registration fee and a "license fee" which is calculated at two percent of the market value on his motor vehicle within the State of California. The party involved objected to the payment of the two percent fee on the basis that this would be taxation within the terms of Section 574 of the United States Code cited above. In view of his failure to pay the two percent tax, the State of California commenced proceedings against him under a criminal section of the statute and convicted him for failing to register his car in California. The conviction was reversed.

The United States Supreme Court considered this matter on a Writ of Certiorari. In its decision the Supreme Court upheld that portion of the California law which required the {*50} person stationed within California to pay the registration fee provided by law so

long as he had not registered or paid a similar fee in his home state, the State of Washington. However, it affirmed that portion of the California Supreme Court opinion which held that the two percent "license fee" was in actuality a fee other than a fee on a motor vehicle or its use such as is permitted to be taxed under Section 574 of the Soldiers' and Sailors' Relief Act. In reaching its decision the Supreme Court held as follows:

". . . Rather, reading the Act, as we must, 'with an eye friendly to those who dropped their affairs to answer their country's call,' . . . **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.. .**" (Emphasis supplied.)

Under New Mexico law an aircraft is not defined by statute as being a motor vehicle. That being the case, it is our opinion that aircraft of non-resident servicemen are exempt from all of the provisions of the Aircraft Registration Act.