

1971

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Jerome J. Curtis Jr.

Repository Citation

Curtis, Jerome J. Jr., "State Taxation of Servicemen" (1971). *Popular Media*. 22.
https://scholarship.law.wm.edu/popular_media/22

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State Taxation of Servicemen*

by JEROME J. CURTIS, JR.
 Captain, JACC, U. S. Army
 Instructor, Military Affairs Division
 The Judge Advocate General's School
 Charlottesville, Virginia

TODAY THERE are over three million taxpayers serving in the armed forces. Most of these individuals have served at various times in states other than their home states, and many of them have unwittingly paid taxes in their duty or station states despite a federal statute exempting them from such tax liabilities. Hopefully a review of that statute and its implications will assist the Bar in insuring for its military clientele the maximum protection envisioned by Congress. Section 514 of the Soldiers' and Sailors' Civil Relief Act¹ in most instances relieves a nonresident serviceman of the obligation of paying income and personal property taxes in his duty state. On the other hand, it does not exempt real estate owned by a soldier or sailor from taxation in any state having jurisdiction to assess a tax on the property.

Income Taxes

An individual's income may be taxed by a state in only three situations: when the individual is a domiciliary of the particular state, when he is a resident of the state, and when he derives income from within the state. In the first two instances all income may be taxed regardless of its source, but in the last situation only such income as is earned within the state may be taxed.² Realizing that servicemen serve in different states during their military careers and frequently face multiple taxation as a result, Congress enacted section 514. Section 514(1) promulgates the general rule that a serviceman neither acquires nor loses a domicile or residence for tax purposes because he is present in or absent from a tax jurisdiction solely in compliance with military orders. Thus, a soldier can not be taxed either as a domiciliary or a resident by any state except his actual domicile or residence. Addi-

tionally, section 514(1) provides that military compensation shall not be deemed "income for services performed within, or from sources within" any state except a serviceman's actual domicile or residence. Accordingly, a resident or domiciliary of State A serving on active duty in State B may not be compelled to pay income taxes on his military earnings to State B or any of its political subdivisions. However, income derived from off-duty employment is not protected from classification as income derived within the duty state. Thus, in the above example, State B could properly assess a tax on the soldier's off-duty, civilian income.

Property Taxes and Assessments Regarding Motor Vehicles

Section 514(1) deals not only with income taxes, but also reaches any tax on a serviceman's person or personal property if that tax is predicated upon domicile or residence. Since situs is the traditional jurisdictional basis for taxing personalty, the section further provides that a serviceman's personalty shall not be deemed to have a situs for tax purposes in any jurisdiction other than his true domicile or residence. When a soldier brings personalty into his duty state, that state can not assess an *ad valorem* tax on the property since by operation of law the property is not located in the state.³

While an automobile is obviously personal property, section 514(2) broadens the meaning of taxation to include "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof" except in a serviceman's home state. The relationship between subsections (1) and (2) is considered below.

Despite the Act's broad objective of shielding servicemen from multiple taxation, circumspection is often required in exercising its protections. Each year tax authorities, especially at the lowest levels, levy taxes on nonresident servicemen who, unaware of section 514, pay the assessments.

*The opinions and conclusions presented herein are those of the author and do not necessarily represent those of The Judge Advocate General's School, the Department of the Army or any other governmental agency.



Home of Record

A subject of frequent confusion is an administrative entry in a serviceman's military records known as "home of record." Many officials assume that this entry reflects an administrative determination by the armed services that the jurisdiction listed is the serviceman's legal domicile or residence. The State of Kansas, for example, takes the following position:

Normally the place of residence at the time of induction into the service is presumed to be the legal state of residence of a member of the armed forces, and remains so until he actually establishes his residency in another state and changes his service records in recognition thereof. (Emphasis added.)⁴

The presumption that one's home of record was his legal residence at the time he entered active duty is sound since in most cases the presumption comports with the facts. However, it places an impossible burden upon a serviceman to insist that in order to overcome the presumption, he must secure a change in his listed home of record. Home of record is simply an entry to facilitate computation of a serviceman's entitlement to travel allowances. It is not a determination of domicile or residence.⁵ If the entry were meant to reflect residence or domicile, procedures would exist for changing the entry when a serviceman effects a bona fide change in his residence or domicile. It is the author's experience that the armed forces will not change a home of record unless the original entry was erroneous at the time it was made. Nevertheless, local authorities continue to place undue importance upon home of record. This attitude often creates a hardship in the case of a soldier who in the course of a twenty or thirty year career might easily change a domicile or residence.

Off-Post Housing

Some state tax officials argue that servicemen who purchase residential real estate in a state become residents of that state.⁶ One federal court, in considering such a contention, concluded that such an inference could not be drawn from the fact that a soldier obtained off-post housing.

In the instant case, the petitioner chose living quarters in Park Forest not because he desired to move from Delaware County, Pennsylvania, but because he was under orders to perform daily military duties in Chicago, Illinois, and it was imperative that he be present in the area to perform those duties. *Woodroffe v. Village of Park Forest*, 107 F.Supp. 906, 910 (N.D. Ill. 1952).

In *Woodroffe* the soldier had only leased the off-post living quarters, but a nonresident serviceman who purchases a home near his duty station usually does so for the same reasons his contemporaries rent housing.

Payment of Taxes Elsewhere

Local tax authorities often seek to know if a serviceman who claims nonresident status has paid income or personal property taxes in another state. As a result, many servicemen have concluded that they are obligated to pay such taxes in their duty states unless they have paid similar taxes elsewhere. Section 514, however, does not condition immunity from income or personal property taxes upon payment of such taxes in another jurisdiction. The exemption applies whether or not the serviceman's home state imposes an income or personal property tax; it applies even where the home state levies these taxes and the serviceman unlawfully refuses to pay them.⁷ An interesting problem is posed by the fact that most states impose personal property taxes only on property which is located within their boundaries on a certain date or during a given period. The Supreme Court in dictum has suggested a soldier's home state may tax personalty which the soldier has taken with him to his duty state.⁸ Mr. Justice Reed concluded that section 514 reserved the right of taxation to a serviceman's actual domicile or residence.⁹ Apparently, since under section 514 personalty is not located in any jurisdiction other than a serviceman's home state, the property must through a legal fiction retain its situs in the individual's actual domicile or residence.

Immunity from licenses, fees, and excises imposed with respect to motor vehicles is expressly conditioned upon payment of the license, fee, or excise "required by the State . . . of which the person is a resident or in which he is domiciled." The Supreme Court has held that the word "required" in the statute must be interpreted as "of."¹⁰ Thus, an Air Force officer, who was a resident of the State of Washington but stationed in California and who had registered his vehicle in Alabama, was not exempt from registering his automobile in California even though, under the facts of the case, registration in Washington was not required by Washington law. Actual payment of the license fee to Washington was a prerequisite to the application of section 514, not merely compliance with Washington law. Nonetheless, on other grounds the officer's conviction for failing to register his vehicle in California was reversed. The California registration fee consisted of a flat \$8.00 charge and an additional charge of two percent of the value of the vehicle. The Court held that the words in section 514(2) "licenses, fees, or excises" referred only to those charges necessary to operate a vehicle registration program. While \$8.00 might bear a reasonable relationship to the administration of the registration system, the two percent assessment was a clear revenue-producing device; in effect, it was a

personal property tax from which a nonresident serviceman was exempt without having paid a similar tax on the property to any jurisdiction.

Sales and Use of Taxes

Recently the Supreme Court in *Sullivan v. United States*,¹¹ reversing the Second Circuit,¹² ruled that section 514 does not exempt nonresident servicemen from their duty states' sales and use taxes. The Court noted that section 514 was not intended to cover taxes on retail transactions which are imposed only once (as opposed to annually recurring taxes).¹³ Seizing upon *Sullivan*, at least one state has announced its intent to impose greater use tax burdens on nonresident servicemen than had been the case before the Court's decision.

The California State Board of Equalization has ruled that a use tax must be paid with respect to any property brought into that state by a nonresident serviceman if the property is purchased outside California after such time as the serviceman receives orders transferring him to California.¹⁴ Such an imposition of a use tax was not sanctioned in *Sullivan*¹⁵ and is not without constitutional difficulties. The use tax has traditionally been employed to prevent circumvention of a state's sale tax. For example, a resident of State A who escaped that state's sales tax by purchasing goods outside the state could be subjected to a use tax upon returning to State A with his acquisitions. However, before a state may tax a transaction, the Due Process Clause requires a sufficient "nexus between such a tax and transactions within a state for which the tax is an exaction."¹⁶ Until a nonresident serviceman is physically present in his duty state, it is doubtful that sufficient nexus exists between that state and any purchases made by him outside its borders. Subsequent conduct, *i.e.* registration of an automobile in the duty state as in *Sullivan*, may supply the nexus. Generally, however, only if it is assessed to prevent nonresident servicemen from escaping sales taxes by buying property outside the state, is the use tax a permissible device when applied to nonresident servicemen. No legitimate end, other than revenue production, is served by permitting a state to tax indirectly a sale made outside its boundaries by a serviceman who has no connection with the state. *Sullivan* itself recognized this by holding that a tax must be based on a "retail transaction," presumably within the state, in order to avoid the restrictions of section 514.¹⁷

The Serviceman's Family

Perhaps the major shortcoming of section 514 is its failure to protect the property of a nonresident serviceman's dependents. The Soldiers' and Sailors' Civil Relief Act was enacted to protect those

who must move from one jurisdiction to another in response to the Nation's call. The families of servicemen, no less than the men themselves, share the inconveniences and hardships of frequent moves. Wives of soldiers dwell in states other than their domiciles and legal residences solely because of their husband's orders. The wives remain domiciliaries of their home states and can be taxed by their home states; nonetheless, their husbands' duty states may subject their property and income to double taxation. Tax credits may ameliorate the situation, but credits were thought insufficient protection with respect to the serviceman's property when section 514 was enacted. Why should they be thought any more sufficient when applied to the soldier's wife? The extent of the problem is best seen in those states which assess taxes on property owned jointly by a serviceman and his wife. These states impose a tax on that half of the property which represents the wife's interest. When, as in most cases, the jointly owned property was purchased by the husband alone and the character of the title is a mere convenience, the spirit which led to the passage of section 514 is severely dampened.

Burden of Proof

There are no definitive standards for determining who has the burden of establishing whether a serviceman's presence in or absence from a particular jurisdiction is or is not solely the result of obedience to military orders. In construing Section 201 of the Soldiers' and Sailors' Civil Relief Act,¹⁸ which entitles a serviceman to a stay of civil proceedings against him unless a court finds his ability to defend is not materially affected by his military service, the Supreme Court observed:

The act makes no express provision as to who must carry the burden of showing that a party will or will not be prejudiced, in pursuance no doubt of its policy of making the law flexible to meet the great variety of situations no legislator and no court is wise enough to foresee. We, too, refrain from declaring any rigid doctrine of burden of proof in this matter, believing that courts called upon to use discretion will usually have enough sound sense to know from what direction their information should be expected to come.¹⁹

Thus, the trial court in its discretion can place the burden where it believes it reasonably should lie. Differences in the availability of witnesses or other evidence might result in the burden being placed on the serviceman in one case and on the tax collector in another. Section 514, like the section the Supreme Court discussed, does not provide a standard for determining where the burden of proof lies, and the same flexible rule seems appropriate in a case under section 514.

In any event, a serviceman who relies upon sec-

tion 514 should be prepared to carry the burden himself. In most cases this should not be a difficult burden for him to sustain since he usually has ready access to that evidence which will substantiate his assertion that the sole reason for his presence in a particular state is military orders. As

long as tax authorities are not permitted to rely solely on such presumptions as those based upon home of record or the purchase of residential realty, the serviceman should have no fear of being at a disadvantage in a contest over his status as a resident or non-resident.

Footnotes

¹50 U.S.C. App. § 574 (1964).

²85 C.J.S. Taxation § 1090.

³California v. Buzard, 382 U.S. 386 (1966).

⁴Kansas Income Tax Instructions for Armed Forces Personnel 1968, December 1968.

⁵Department of Defense, Joint Travel Regulations, Vol. I, M 1150-3a, p. 1-33, change 200, 1 September 1969.

⁶For example, Instructions for Preparing Form 760 Virginia State Resident Individual Income Tax Return for 1969, p. 3.

⁷Dameron v. Broadhead, 345 U.S. 322 (1953).

⁸*Id.*

⁹*Id.* at 326.

¹⁰Note 3, *supra*.

¹¹395 U.S. 169, 172-3 (1969).

¹²United States v. Sullivan, 398 F. 2d 672 (2d Cir. 1968).

¹³The legislative history of section 514 "is simply irreconcilable with the proposition that Congress thought the Act would apply

to a tax which, like the sales or use tax, does not apply annually to all personal property within the State but is imposed only once and then only when there has been a retail transaction." Sullivan v. United States, 395 U.S. 169, 177 (1969).

¹⁴33 Tax Administrators News 89 (1969).

¹⁵The use taxes considered in Sullivan were assessed with respect to property purchased within the state or voluntarily registered there. The Court thus left unresolved the effect of section 514 on use taxes assessed on property purchased outside the station state before the purchaser is physically transferred there.

¹⁶Wisconsin v. J. C. Penny Co., 311 U.S. 435, 445 (1940); Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 464 (1959).

¹⁷Note 13, *supra*.

¹⁸50 U.S.C. App. § 521 (1964).

¹⁹Boone v. Lightner, 319 U.S. 561, 569 (1943).