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## Armed Forces - Soldiers and Sailors Civil Relief Act - Immunity of Non-Resident Serviceman from State Automobile "License Fee," California v. Buzard, 382 U.S. 386 (1966)

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presses an underlying motive when he states in *Peyton v. Fields*, "He made the customary and often abused claim for relief, i.e., that he was denied due process of law because he was not afforded effective assistance of counsel by his court-appointed counsel . . ." <sup>12</sup> However, the rules used by the Court in the instant cases are logical and, indeed, provide substantial justice. Based on the totality of the circumstances of the defendants' cases, the law should not require the useless formality of extended preparation when the defendant cannot show that the fruits of such preparation would be increased.

*Thomas C. Clark*

**Armed Services—SOLDIERS AND SAILORS CIVIL RELIEF ACT—IMMUNITY OF NON-RESIDENT SERVICEMAN FROM STATE AUTOMOBILE "LICENSE FEE."** A serviceman residing in a state solely because of military or naval orders is accorded broad immunity from local tax measures, under the Soldiers' and Sailors' Civil Relief Act.<sup>1</sup> In *California v. Buzard*<sup>2</sup> the defendant soldier, claiming immunity under the Act, contested the state requirement that he pay a "license fee" of two percent of the market value of his automobile as a prerequisite to registration.<sup>3</sup> Buzard, a Washington domiciliary, had paid no fees upon his car to

12. *Peyton v. Fields*, *supra* note 1, at 763.

1. § 514, 56 Stat. 777 (1942), 58 Stat. 722 (1944), 76 Stat. 768 (1962), 50 U.S.C.A. App. § 574 states:

"(1) 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 person shall not be deemed to have lost a residence or domicile in any State . . . 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 State . . . 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 . . . of which such person is not a resident or in which he is not domiciled . . . personal property shall not be deemed to be located or present in or to have a situs for taxation in such State. . . .

"(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."

The legislation shall hereinafter be called "the Act."

2. 382 U.S. 386 (1966).

3. CALIFORNIA REVENUE AND TAXATION CODE, §§ 10751, 10752. (Although the "license fee" was held to be an excise on the privilege of using public highways, rather than

his home state within the registration year. Under the Act a serviceman is exempt from paying assessments against his car to the host state if he has paid the "license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled. . . ." <sup>4</sup> However, Washington requires no fees of its citizens for automobiles which are not driven upon the state's roads; thus the defendant incurred no liability to his home state as a result of his absence therefrom.

The California Supreme Court reversed defendant's conviction for failure to pay the "license fee," <sup>5</sup> and the Supreme Court affirmed. In so doing the Court ruled that the relevant section of the Act <sup>6</sup> rendered defendant immune from operation of the California law.

In *Dameron v. Brodhead* <sup>7</sup> the Court alleviated some of the uncertainty in interpretation of the Act, by declaring that the clause "For the purposes of taxation [of the personal property of a non-resident serviceman] personal property shall not be *deemed* to be located in or to have a situs for taxation in such state. . . ." <sup>8</sup> indicates a conclusive presumption; not, as contended, a rebuttable presumption which might render the property susceptible to taxation in some cases.

In the instant case, which represents a further clarification of the Act, the Supreme Court recognized the purpose of Congress to protect extensively those in the service of their country; and accordingly the Court interpreted the applicable section heavily in favor of the protected class. <sup>9</sup>

The relevant section includes motor vehicles as personal property, and provides:

. . . the term 'taxation' under subsection (1) 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 . . . of which the person is a resident or in which he is domiciled has been paid. <sup>10</sup>

The California Supreme Court determined this to mean that the host

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a property tax, in *Ingels v. Riley*, 5 Cal.2d 154, 53 P.2d 939 (1936); § 10758 of the Code designates it as "in lieu of ad valorem taxes.")

4. *Supra* note 1.

5. *California v. Buzard*, 61 Cal.2d 833, 395 P.2d 593 (1964).

6. *Supra* note 1.

7. 345 U.S. 322 (1953), wherein the Court also upheld the constitutionality of the Act.

8. *Supra* note 1.

9. 382 U.S.—, 86 S. Ct. 484 (1966).

10. *Supra* note 1.

state may impose a licensing or registration fee *only* if the subject's home state "requires" (*i.e.* actually assesses and claims) a similar tax. Since defendant's domicile imposed no tax upon him, the result, under this interpretation, would be his complete escape from registration. In recognizing Congress' intent that a serviceman's car must be licensed and registered in some jurisdiction, the Court construed the provision to mean that the person may choose to pay either the fee *of* his state, or those of the host state.

In accord with established principles, the Supreme Court declared that the meaning of "licenses, fees, or excises" is to be determined by federal law.<sup>11</sup> California here argued that the Act permits assessment of its "license fee" against the defendant; but the Court answered, ". . . there is no persuasive evidence Congress meant state labels to be conclusive,"<sup>12</sup> and the reality that this "license fee" is a revenue measure, clearly severable from California's registration procedures, renders the defendant immune from its operation. Since Congress intended that a non-resident serviceman should not be subject to such taxes,<sup>13</sup> regardless of the policies of his home state, the Court concluded that Section 514(2) (b) of the Act concerns only those "taxes" which are vital to enforcement of the host state's registration and licensing laws. The test of the applicability of such a tax ". . . is whether the inclusion [of the federal immunity] would deny the State power to enforce the nonrevenue provisions of state motor vehicle legislation."<sup>14</sup>

The present decision further substantiates the sweeping protection

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11. See *Storaasli v. State of Minnesota*, 283 U.S. 57 (1931); *Faulkner v. C.I.R.*, 112 F.2d 987 (1st Cir. 1940); *In re Quaker Room*, 90 F.Supp. 758 (S.D. Cal. 1950); *International Ladies' Garment Workers' Union, AFL v. Jay-Ann Co.*, 228 F.2d 632 (5th Cir. 1956); *Luehrmann's Estate v. C.I.R.*, 287 F.2d 10 (8th Cir. 1961).

12. *Supra* note 9, at 483.

13. In *Snapp v. Neal*, 382 U.S. 397 (1966) the Court declared an ad valorem tax assessed by Mississippi against a non-resident serviceman's house trailer to be beyond the purview of "licenses, fees, or excises" which a host state may impose under the Act. As emphasized in *Dameron v. Brodhead*, *supra* note 7, and *U.S. v. Arlington County, Comm. of Va.*, 326 F.2d 929 (4th Cir. 1964) the sole right of such taxation is saved to the home state, regardless of whether it exercises that right.

14. *Supra* note 9 at 484.

Whether a non-resident serviceman is subject to municipal automobile license taxes is an open question. § 574 (1) of the Act removes personal property from the taxing power of political subdivisions, while § 574 (2), dealing specifically with automobile assessments, reads: ". . . 'taxation' shall include . . . Provided: That the license, fee, or excise required by the *State, Territory, possession, or District of Columbia* of which the person is a resident . . . has been paid." Whether deletion of "political subdivision" from subsection (2) was intentional or inadvertent has not been acknowledged by the

which the Act has been recognized as granting our military personnel.<sup>15</sup> The new test proffered by the Court should determine accurately the status of a jurisdiction's motor vehicle assessments in relation to a non-resident serviceman. Also it should provide the serviceman with a better understanding of his rights, as well as the ability to make an economically more meaningful choice of where to register his automobile.

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courts. The effect of intentional exclusion of the term by Congress would indicate that non-payment of a municipal license tax in the subject's home jurisdiction would still not render him subject to the assessment of an out-of-state locality where he resides while in the service.

In *Woodroffe v. Village of Park Forest*, 107 F.Supp. 906 (N.D. Ill. 1952) the plaintiff soldier, residing with his family in the defendant locality, was declared immune from the Village "vehicle tax." Woodroffe had paid all the fees required by his home state, however. The opposite result was reached in *Whiting v. City of Portsmouth*, 202 Va. 609, 118 S.E.2d 505 (1961) where the Virginia Supreme Court of Appeals upheld imposition of the city's "license tax," stating, "The tax . . . is not a property tax, but a license tax, assessed against the owner of the automobile for the privilege of using it on the streets of the city." The validity of this view has also been expressed in the Opinions of the Attorney General of Virginia (1948-49, p. 160; 1954-55, p. 155; 1958-59, p. 190). It should be noted that Whiting, though always claiming to be a non-resident serviceman, has bought, registered, and titled his car in Virginia, while listing only his Portsmouth address.

It is questionable whether the Virginia view would survive the test applied by the Supreme Court in the principal case. The test refers to "State power to enforce the *nonrevenue provisions* of state motor vehicle legislation." Admittedly a state can delegate powers to its municipalities, and the test might be expanded to include these delegations as "state power" and "state legislation"; however, it is difficult to see how a non-resident serviceman's immunity from a local license tax "would deny the State power to enforce *nonrevenue provisions*" of its motor vehicle laws. Furthermore, the Court, in the Buzard case, cites the Whiting case as "contra" to the purposes of the Act, indicating that the local license tax is "other than" a license, fee or excise (at 382 U.S. —, 86 S.Ct. 483).

15. For instance, an Indiana resident who had paid all the motor fees of his home state was declared immune from the taxes of the host state, even though his wife used the car to drive to and from her place of employment. *Christian v. Strange*, 96 Ariz. 106, 392 P.2d 575 (1964).